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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2006

BEGINNING OF TERM

OCTOBER 2, 2006, THROUGH APRIL 16, 2007

TOGETHER WITH OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

FRANK D. WAGNER

REPORTER OF DECISIONS

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Errata

289 U. S. 478, line 2: "enabling" should be "employing".
546 U. S. 1120, No. 05–7773: "471 F. 3d" should be "417 F. 3d".
546 U. S. 1188, No. 05–8163: "812 So. 2d" should be "912 So. 2d".
548 U. S. 130, lines 5, 7, 8, 11: "mol/L" should be "μmol/L".

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

JOHN G. ROBERTS, JR., CHIEF JUSTICE.
JOHN PAUL STEVENS, ASSOCIATE JUSTICE.
ANTONIN SCALIA, ASSOCIATE JUSTICE.
ANTHONY M. KENNEDY, ASSOCIATE JUSTICE.
DAVID H. SOUTER, ASSOCIATE JUSTICE.
CLARENCE THOMAS, ASSOCIATE JUSTICE.
RUTH BADER GINSBURG, ASSOCIATE JUSTICE.
STEPHEN BREYER, ASSOCIATE JUSTICE.
SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE.

RETIRED

SANDRA DAY O'CONNOR, ASSOCIATE JUSTICE.

OFFICERS OF THE COURT

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SUPREME COURT OF THE UNITED STATES

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective February 1, 2006, viz.:

For the District of Columbia Circuit, JOHN G. ROBERTS, JR., Chief Justice.

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, RUTH BADER GINSBURG, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, JOHN G. ROBERTS, JR., Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

For the Sixth Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Seventh Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Eighth Circuit, SAMUEL A. ALITO, JR., Associate Justice.

For the Ninth Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Tenth Circuit, STEPHEN BREYER, Associate Justice.

For the Eleventh Circuit, CLARENCE THOMAS, Associate Justice.

For the Federal Circuit, JOHN G. ROBERTS, JR., Chief Justice.

February 1, 2006.

(For next previous allotment, see 546 U. S., p. V.)

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2006

PURCELL ET AL. *v.* GONZALEZ ET AL.

ON APPLICATION FOR STAY

No. 06A375 (06–532). Decided October 20, 2006*

Plaintiffs below, Arizona residents, Indian tribes, and community groups, brought suit in federal court challenging the State's new voter identification requirements. The District Court denied their request for a preliminary injunction but issued no findings of fact or conclusions of law at that time. When, on appeal, plaintiffs received a briefing schedule concluding after the November election, they sought an injunction pending appeal, which the Ninth Circuit granted without explanation. Subsequently, the District Court issued its findings of fact and conclusions of law.

Held: There is no indication that the Ninth Circuit gave the necessary deference to the discretion of the District Court, and this was error. By failing to provide any factual findings or reasoning of its own, the Ninth Circuit left this Court in the position of evaluating the Circuit's bare order in light of the District Court's ultimate findings, which have not been shown to be incorrect. While this Court expresses no opinion on the correct disposition of the appeals or ultimate resolution of the cases, vacating the Ninth Circuit's order shall of necessity allow the election to proceed without an injunction suspending the requirements.

Certiorari granted; vacated and remanded.

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*Together with No. 06A379 (06–533), *Arizona et al.* v. *Gonzalez et al.*, also on application for stay.

PER CURIAM.

The State of Arizona and county officials from four of its counties seek relief from an interlocutory injunction entered by a two-judge motions panel of the Court of Appeals for the Ninth Circuit. JUSTICE KENNEDY has referred the applicants' filings to the Court. We construe the filings of the State and the county officials as petitions for certiorari; we grant the petitions; and we vacate the order of the Court of Appeals.

I

In 2004, Arizona voters approved Proposition 200. The measure sought to combat voter fraud by requiring voters to present proof of citizenship when they register to vote and to present identification when they vote on election day.

The election procedures implemented to effect Proposition 200 do not necessarily result in the turning away of qualified, registered voters by election officials for lack of proper identification. A voter who arrives at the polls on election day without identification may cast a conditional provisional ballot. For that ballot to be counted, the voter is allowed five business days to return to a designated site and present proper identification. In addition any voter who knows he or she cannot secure identification within five business days of the election has the option to vote before election day during the early voting period. The State has determined that, because there is adequate time during the early voting period to compare the voters' signatures on the ballot with their signatures on the registration rolls, voters need not present identification if voting early.

Arizona is a covered jurisdiction under §5 of the Voting Rights Act of 1965. So it was required to preclear any new voting "standard, practice, or procedure" with either the United States Attorney General or the District Court for the District of Columbia to ensure its new voting policy did "not have the purpose [or] effect of denying or abridging the right to vote on account of race or color," 42 U. S. C. §1973c. See

Georgia v. *Ashcroft*, 539 U. S. 461, 461–462 (2003). On May 6, 2005, the United States Attorney General precleared the procedures Arizona adopted under Proposition 200.

In the District Court the plaintiffs in this action are residents of Arizona, Indian tribes, and various community organizations. In May 2006, these plaintiffs brought suit challenging Proposition 200's identification requirements. On September 11, 2006, the District Court denied their request for a preliminary injunction, but it did not at that time issue findings of fact or conclusions of law. These findings were important because resolution of legal questions in the Court of Appeals required evaluation of underlying factual issues.

The plaintiffs appealed the denial, and the Clerk of the Court of Appeals set a briefing schedule that concluded on November 21, two weeks after the upcoming November 7 election. The plaintiffs then requested an injunction pending appeal from the Court of Appeals. Pursuant to the Court of Appeals' rules, the request for an injunction was assigned to a two-judge motions/screening panel. See Rule 3–3 (CA9 2002). On October 5, after receiving lengthy written responses from the State and the county officials but without oral argument, the panel issued a four-sentence order enjoining Arizona from enforcing Proposition 200's provisions pending disposition, after full briefing, of the appeals of the denial of a preliminary injunction. The Court of Appeals offered no explanation or justification for its order. Four days later, the court denied a motion for reconsideration. The order denying the motion likewise gave no rationale for the court's decision.

Despite the time-sensitive nature of the proceedings and the pendency of a request for emergency relief in the Court of Appeals, the District Court did not issue its findings of fact and conclusions of law until October 12. It then concluded that "plaintiffs have shown a possibility of success on the merits of some of their arguments but the Court cannot say that at this stage they have shown a strong likelihood."

Order in No. CV 06–1268–PHX–ROS etc. (D. Ariz., Oct. 11, 2006), pp. 7–8, App. to Application for Stay of Injunction, Tab 5 (internal quotation marks and alterations omitted). The District Court then found the balance of the harms and the public interest counseled in favor of denying the injunction.

II

"A State indisputably has a compelling interest in preserving the integrity of its election process." *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 231 (1989). Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. "[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds* v. *Sims*, 377 U. S. 533, 555 (1964). Countering the State's compelling interest in preventing voter fraud is the plaintiffs' strong interest in exercising the "fundamental political right" to vote. *Dunn* v. *Blumstein*, 405 U. S. 330, 336 (1972) (internal quotation marks omitted). Although the likely effects of Proposition 200 are much debated, the possibility that qualified voters might be turned away from the polls would caution any district judge to give careful consideration to the plaintiffs' challenges.

Faced with an application to enjoin operation of voter identification procedures just weeks before an election, the Court of Appeals was required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases and its own institutional procedures. Court orders affecting elections, especially conflicting orders, can themselves result in voter

confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase. So the Court of Appeals may have deemed this consideration to be grounds for prompt action. Furthermore, it might have given some weight to the possibility that the nonprevailing parties would want to seek en banc review. In the Ninth Circuit that procedure, involving voting by all active judges and an en banc hearing by a court of 15, can consume further valuable time. These considerations, however, cannot be controlling here. It was still necessary, as a procedural matter, for the Court of Appeals to give deference to the discretion of the District Court. We find no indication that it did so, and we conclude this was error.

Although at the time the Court of Appeals issued its order the District Court had not yet made factual findings to which the Court of Appeals owed deference, see Fed. Rule Civ. Proc. 52(a), by failing to provide any factual findings or indeed any reasoning of its own the Court of Appeals left this Court in the position of evaluating the Court of Appeals' bare order in light of the District Court's ultimate findings. There has been no explanation given by the Court of Appeals showing the ruling and findings of the District Court to be incorrect. In view of the impending election, the necessity for clear guidance to the State of Arizona, and our conclusion regarding the Court of Appeals' issuance of the order we vacate the order of the Court of Appeals.

We underscore that we express no opinion here on the correct disposition, after full briefing and argument, of the appeals from the District Court's September 11 order or on the ultimate resolution of these cases. As we have noted, the facts in these cases are hotly contested, and "[n]o bright line separates permissible election-related regulation from unconstitutional infringements." *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 359 (1997). Given the imminence of the election and the inadequate time to resolve the

factual disputes, our action today shall of necessity allow the election to proceed without an injunction suspending the voter identification rules.

The order of the Court of Appeals is vacated, and the cases are remanded for further proceedings consistent with this opinion. Pursuant to this Court's Rule 45.3, the Clerk is directed to issue the judgment in these cases forthwith.

It is so ordered.

JUSTICE STEVENS, concurring.

Allowing the election to proceed without enjoining the statutory provisions at issue will provide the courts with a better record on which to judge their constitutionality. At least two important factual issues remain largely unresolved: the scope of the disenfranchisement that the novel identification requirements will produce, and the prevalence and character of the fraudulent practices that allegedly justify those requirements. Given the importance of the constitutional issues, the Court wisely takes action that will enhance the likelihood that they will be resolved correctly on the basis of historical facts rather than speculation.

Syllabus

AYERS, ACTING WARDEN *v.* BELMONTES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 05–493. Argued October 3, 2006—Decided November 13, 2006

In the penalty phase of respondent's capital murder trial, he introduced mitigating evidence to show, *inter alia*, that he would lead a constructive life if incarcerated rather than executed, testifying that he had done so during a previous incarceration, when he had embraced Christianity. Two prison chaplains and his Christian sponsors from that time testified on his behalf, and the parties' closing arguments discussed this mitigating evidence and how the jury should consider it. The trial judge told the jury to consider "[a]ny other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime," an instruction known as "factor (k)" under California's then-applicable statutory scheme. Respondent was sentenced to death. He contended, on direct review and in federal habeas proceedings, that factor (k) and the trial court's other instructions barred the jury from considering his forward-looking mitigation evidence in violation of his Eighth Amendment right to present all mitigating evidence in capital sentencing proceedings. The Federal District Court denied relief, but the Ninth Circuit reversed. On reconsideration in light of *Brown* v. *Payton*, 544 U. S. 133, the Ninth Circuit again invalidated respondent's sentence.

Held: The factor (k) instruction is consistent with the constitutional right to present mitigating evidence in capital sentencing proceedings. Pp. 12–24.

(a) This Court has previously found that factor (k) does not preclude consideration of constitutionally relevant evidence, such as mitigating evidence about a defendant's precrime background and character, *Boyde* v. *California*, 494 U. S. 370, 377–378, 386, or postcrime rehabilitation, *Brown* v. *Payton*, *supra*, at 135–136, and found the proper inquiry to be "whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence," *Boyde*, *supra*, at 380. Pp. 12–14.

(b) That inquiry applies here. Like *Payton*, this case involves forward-looking evidence and comes to the Court on federal habeas proceedings, but unlike *Payton*, it was filed before the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The Ninth Circuit distinguished *Payton* on this ground, but erred in finding

a "reasonable probability" that the jury did not consider evidence of respondent's future potential. 414 F. 3d 1094, 1138. Pp. 14–24.

(1) The Circuit adopted a narrow and unrealistic interpretation of factor (k), ruling that "this instruction allows the jury to consider evidence that bears upon the commission of the crime by the defendant and excuses or mitigates his culpability for the offense," 414 F. 3d, at 1134. As *Boyde* and *Payton* explain, the jury is directed "to consider *any other circumstance* that might excuse the crime." *Boyde*, *supra*, at 382. Just as precrime background and character *(Boyde)* and postcrime rehabilitation *(Payton)* may "extenuat[e] the gravity of the crime," so may some likelihood of future good conduct count as a circumstance tending to make a defendant less deserving of the death penalty. The Ninth Circuit failed to heed the full import of *Payton*'s holding, which is significant even where AEDPA is inapplicable. Moreover, since respondent sought to extrapolate future behavior from precrime conduct, his mitigation theory was more analogous to the good-character evidence *Boyde* found to fall within factor (k)'s purview. Pp. 15–16.

(2) This Court's interpretation of factor (k) is the one most consistent with the evidence presented to the jury, the parties' closing arguments, and the trial court's other instructions. It is improbable that the jury believed that the parties were engaged in an exercise in futility when respondent presented extensive forward-looking evidence in open court. Both prosecution and defense arguments assumed the evidence was relevant. The prosecutor's remarks that the evidence was weak and his opinion about the weight it should be given confirmed to the jury that it should analyze respondent's future potential. Respondent's personal pleas were consistent with a trial in which the jury would assess his future prospects in determining what sentence to impose. This analysis is confirmed by defense counsel's closing arguments. The trial court's other instructions make it quite implausible that the jury would deem itself foreclosed from considering respondent's full case in mitigation. The judge told the jury to consider all of the evidence, which included respondent's forward-looking mitigation case. The sharp contrast between the aggravation instruction (only enumerated factors could be considered) and the mitigation one (listed factors were merely examples) also made clear that the jury was to take a broad view of mitigating evidence. In concluding otherwise, the Ninth Circuit cited juror queries as evidence of confusion. Assuming that interpretation is correct, the court's conclusion that a juror likely ignored forward-looking evidence presupposes what it purports to establish, namely, that forward-looking evidence could not fall within factor (k). Pp. 16–24.

414 F. 3d 1094, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, and ALITO, JJ., joined. SCALIA, J., filed a concurring opinion, in which THOMAS, J., joined, *post*, p. 24. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined, *post*, p. 25.

Mark A. Johnson, Deputy Attorney General of California, argued the cause for petitioner. With him on the briefs were *Bill Lockyer*, Attorney General, *Manuel M. Medeiros*, State Solicitor General, *Donald E. de Nicola*, Deputy State Solicitor General, *Mary Jo Graves*, Chief Assistant Attorney General, *Robert R. Anderson*, former Chief Assistant Attorney General, *Michael P. Farrell*, Senior Assistant Attorney General, *Eric L. Christoffersen*, Assistant Supervising Deputy Attorney General, and *Ward A. Campbell*, former Supervising Deputy Attorney General.

Eric S. Multhaup, by appointment of the Court, 547 U. S. 1190, argued the cause for respondent. With him on the brief was *Christopher H. Wing*.*

JUSTICE KENNEDY delivered the opinion of the Court.

Fernando Belmontes, the respondent here, was tried in 1982 in the Superior Court of the State of California in and for the County of San Joaquin. A jury returned a verdict of murder in the first degree and then determined he should

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*Briefs of *amici curiae* urging reversal were filed for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *Kent C. Sullivan*, First Assistant Attorney General, *Don Clemmer*, Deputy Attorney General, and *Gena Bunn* and *Edward L. Marshall*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Terry Goddard* of Arizona, *Mike Beebe* of Arkansas, *John W. Suthers* of Colorado, *Charles J. Crist, Jr.*, of Florida, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Jim Hood* of Mississippi, *George J. Chanos* of Nevada, *Patricia A. Madrid* of New Mexico, *Jim Petro* of Ohio, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Henry D. McMaster* of South Carolina, *Mark L. Shurtleff* of Utah, *Robert F. McDonnell* of Virginia, and *Rob McKenna* of Washington; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger*.

be sentenced to death. The issue before us concerns a jury instruction in the sentencing phase.

The trial court, following the statute then in effect, directed the jury, with other instructions and in a context to be discussed in more detail, to consider certain specific factors either as aggravating or mitigating. The trial court further instructed the jury to consider "[a]ny other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." App. 184. Under the then-applicable statutory scheme this general or catchall factor was codified at Cal. Penal Code Ann. § 190.3(k) (West 1988); and it is referred to as "factor (k)."

Belmontes contended, on direct review, in state collateral proceedings, and in the federal habeas proceedings giving rise to this case, that factor (k) and the trial court's other instructions barred the jury from considering his forward-looking mitigation evidence—specifically evidence that he likely would lead a constructive life if incarcerated instead of executed. The alleged limitation, in his view, prevented the jury from considering relevant mitigation evidence, in violation of his Eighth Amendment right to present all mitigating evidence in capital sentencing proceedings. See, *e. g.*, *Penry* v. *Johnson*, 532 U. S. 782, 797 (2001); *Skipper* v. *South Carolina*, 476 U. S. 1, 4–5, 8 (1986); *Eddings* v. *Oklahoma*, 455 U. S. 104, 112 (1982). The California Supreme Court, affirming the judgment and sentence, rejected this contention and other challenges. *People* v. *Belmontes*, 45 Cal. 3d 744, 799–802, 819, 755 P. 2d 310, 341–343, 355 (1988).

In February 1994, after exhausting state remedies, respondent filed an amended federal habeas petition. The United States District Court for the Eastern District of California denied relief, App. to Pet. for Cert. 140a–141a, 145a, but a divided panel of the United States Court of Appeals for the Ninth Circuit reversed in relevant part, *Belmontes* v. *Woodford*, 350 F. 3d 861, 908 (2003). Over the dissent of eight judges, the Court of Appeals denied rehearing en banc.

Belmontes v. *Woodford*, 359 F. 3d 1079 (2004). This Court granted certiorari, vacated the judgment, and remanded for further consideration in light of *Brown* v. *Payton*, 544 U. S. 133 (2005). *Brown* v. *Belmontes*, 544 U. S. 945 (2005). On remand, a divided panel again invalidated respondent's sentence; it distinguished *Payton* on the grounds that the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214, though applicable in that case, does not apply here. *Belmontes* v. *Brown*, 414 F. 3d 1094, 1101–1102 (2005). Over yet another dissent, the Court of Appeals again denied rehearing en banc. *Belmontes* v. *Stokes*, 427 F. 3d 663 (2005). We granted certiorari, 547 U. S. 1110 (2006), and now reverse.

I

The evidence at trial showed that in March 1981, while burglarizing a home where two accomplices had attended a party, respondent unexpectedly encountered 19-year-old Steacy McConnell. Respondent killed her by striking her head 15 to 20 times with a steel dumbbell bar. Respondent had armed himself with the dumbbell bar before entering the victim's home. See *Belmontes*, *supra*, at 760–764, 755 P. 2d, at 315–317.

In the sentencing phase of his trial Belmontes introduced mitigating evidence to show, *inter alia*, that he would make positive contributions to society in a structured prison environment. Respondent testified that, during a previous term under the California Youth Authority (CYA), he had behaved in a constructive way, working his way to the number two position on a fire crew in the CYA fire camp in which he was incarcerated. App. 44–45, 53. About that time he had embraced Christianity and entered into a Christian sponsorship program. He admitted that initially he participated in this program to spend time away from the camp. Later, after forming a good relationship with the married couple who were his Christian sponsors, he pursued a more religious life and was baptized. Although his religious commit-

ment lapsed upon his release from the CYA, he testified that he would once again turn to religion whenever he could rededicate himself fully to it. *Id.*, at 46–48, 53–55. Finally, he answered in the affirmative when asked if he was "prepared to contribute in anyway [he] can to society if [he was] put in prison for the rest of [his] life." *Id.*, at 58.

Respondent's former CYA chaplain testified at the sentencing hearing that respondent's conversion appeared genuine. The chaplain, describing respondent as "salvageable," expressed hope that respondent would contribute to prison ministries if given a life sentence. *Id.*, at 79–83. An assistant chaplain similarly testified that, based on past experience, respondent likely would be adept at counseling other prisoners to avoid the mistakes he had made when they leave prison. *Id.*, at 95–96. And respondent's Christian sponsors testified he was like a son to them and had been a positive influence on their own son. They also indicated he had participated in various activities at their church. *Id.*, at 99–103, 110–114.

After respondent presented his mitigating evidence, the parties made closing arguments discussing respondent's mitigating evidence and how the jury should consider it. Respondent was also allowed to provide his own statement. The trial judge included in his instructions the disputed factor (k) language, an instruction that has since been amended, see Cal. Jury Instr., Crim., No. 8.85(k) (2005).

II

In two earlier cases this Court considered a constitutional challenge to the factor (k) instruction. See *Brown* v. *Payton*, *supra*; *Boyde* v. *California*, 494 U. S. 370 (1990). In *Boyde*, the Court rejected a claim that factor (k), with its focus on circumstances "'extenuat[ing] the gravity of the crime,'" precluded consideration of mitigating evidence unrelated to the crime, such as evidence of the defendant's background and character. *Id.*, at 377–378, 386. The

"proper inquiry," the Court explained, "is whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence." *Id.*, at 380. Since the defendant in *Boyde* "had an opportunity through factor (k) to argue that his background and character 'extenuated' or 'excused' the seriousness of the crime," the Court saw "no reason to believe that reasonable jurors would resist the view, 'long held by society,' that in an appropriate case such evidence would counsel imposition of a sentence less than death." *Id.*, at 382 (citing *Penry* v. *Lynaugh*, 492 U. S. 302, 319 (1989)). During the sentencing phase in *Boyde*, moreover, the defense had presented extensive evidence regarding background and character, so construing factor (k) to preclude consideration of that evidence would have required the jurors not only to believe that "the court's instructions transformed all of this 'favorable testimony into a virtual charade,'" 494 U. S., at 383 (quoting *California* v. *Brown*, 479 U. S. 538, 542 (1987)), but also to disregard another instruction requiring the jury to "'*consider all of the evidence* which has been received during any part of the trial of this case,'" 494 U. S., at 383.

In *Payton*, the Court again evaluated arguments that factor (k) barred consideration of constitutionally relevant evidence—this time, evidence relating to postcrime rehabilitation, rather than precrime background and character. See 544 U. S., at 135–136. *Payton* did not come to this Court, as had *Boyde*, on direct review, but rather by federal habeas petition subject to AEDPA. Relief was available only if "the state court's adjudication of the claim 'resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.'" *Payton*, *supra*, at 141 (quoting 28 U. S. C. § 2254(d)(1)). Although the prosecutor in *Payton* had argued to the jury—incorrectly—that

factor (k) did not permit consideration of postcrime rehabilitation evidence, this Court concluded that the California Supreme Court reasonably applied *Boyde* in finding no Eighth Amendment violation. 544 U. S., at 142, 146–147. Accepting the prosecutor's reading would have required "the surprising conclusion that remorse could never serve to lessen or excuse a crime." *Id.*, at 142. Furthermore, countering any misimpression created by the prosecution's argument, the defense in *Payton* had presented extensive evidence and argument regarding a postcrime religious conversion and other good behavior. The trial court had instructed the jury to consider all evidence admitted "'during any part of the trial in this case, except as you may be hereafter instructed,'" and the prosecution itself "devoted substantial attention to discounting [the postcrime evidence's] importance as compared to the aggravating factors." *Id.*, at 145–146. Hence, the state court in *Payton* could reasonably have concluded that, as in *Boyde*, there was no reasonable likelihood that the jury understood the instruction to preclude consideration of the postcrime mitigation evidence it had heard. 544 U. S., at 147.

III

As the Court directed in *Boyde*, we inquire "whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence." 494 U. S., at 380. Here, as in *Payton*, respondent argues that factor (k) prevented the jury from giving effect to his forward-looking evidence. And, as in *Payton*, respondent's case comes to this Court in federal habeas proceedings collaterally attacking the state court's ruling. Unlike in *Payton*, however, the federal petition in this case was filed before AEDPA's effective date. AEDPA and its deferential standards of review are thus inapplicable. See *Woodford* v. *Garceau*, 538 U. S. 202, 210 (2003). The Court of Appeals distin-

guished *Payton* on this ground. See 414 F. 3d, at 1101–1102. It was mistaken, however, to find a "reasonable probability" that the jury did not consider respondent's future potential. *Id.*, at 1138.

A

The Court of Appeals erred by adopting a narrow and, we conclude, an unrealistic interpretation of factor (k). "Most naturally read," the Court of Appeals reasoned, "this instruction allows the jury to consider evidence that bears upon the commission of the crime by the defendant and excuses or mitigates his culpability for the offense." *Id.*, at 1134. As both *Boyde* and *Payton* explain, however, this interpretation is too confined. "The instruction did not . . . limit the jury's consideration to 'any other circumstance *of the crime* which extenuates the gravity of the crime.' The jury was directed to consider *any other circumstance* that might excuse the crime." *Boyde*, *supra*, at 382; see also *Payton*, *supra*, at 141–142. And just as precrime background and character *(Boyde)* and postcrime rehabilitation *(Payton)* may "extenuat[e] the gravity of the crime," so may some likelihood of future good conduct count as a circumstance tending to make a defendant less deserving of the death penalty. Cf. *Skipper*, 476 U. S., at 4–5 (explaining that while inferences regarding future conduct do not "relate specifically to [a defendant's] culpability for the crime he committed," those inferences are "'mitigating' in the sense that they might serve 'as a basis for a sentence less than death'" (quoting *Lockett* v. *Ohio*, 438 U. S. 586, 604 (1978) (plurality opinion))).

The Court of Appeals failed to heed the full import of *Payton*'s holding, a holding that has significance even where AEDPA is inapplicable. *Payton* indicated that reading factor (k) to preclude consideration of postcrime evidence would require "the surprising conclusion that remorse could never serve to lessen or excuse a crime." 544 U. S., at 142. So, too, would it be counterintuitive if a defendant's capacity to

redeem himself through good works could not extenuate his offense and render him less deserving of a death sentence.

In any event, since respondent sought to extrapolate future behavior from precrime conduct, his mitigation theory was more analogous to the good-character evidence examined in *Boyde* and held to fall within factor (k)'s purview. See 494 U. S., at 381 (describing the evidence at issue as including evidence of the defendant's "strength of character"). Both types of evidence suggest the crime stemmed more from adverse circumstances than from an irredeemable character. See 414 F. 3d, at 1141–1142 (O'Scannlain, J., concurring in part and dissenting in part); cf. *Johnson* v. *Texas*, 509 U. S. 350, 369 (1993) (noting that the "forward-looking" future-dangerousness inquiry "is not independent of an assessment of personal culpability").

B

Our interpretation of factor (k) is the one most consistent with the evidence presented to the jury, the parties' closing arguments, and the other instructions provided by the trial court. Each of these will be discussed in turn.

As the Court of Appeals recognized, future-conduct evidence was central to the mitigation case presented by the defense. See 414 F. 3d, at 1134. Indeed, although the defense also adduced evidence of a troubled upbringing, respondent testified that he could not use his difficult life "as a crutch to say I am in a situation right now, I'm here now because of that." App. 40. Given this assertion, and considering the extensive forward-looking evidence presented at sentencing—evidence including testimony from two prison chaplains, respondent's church sponsors, and respondent himself—the jurors could have disregarded respondent's future potential only if they drew the unlikely inference that "the court's instructions transformed all of this 'favorable testimony into a virtual charade,'" *Boyde*, *supra*, at 383 (quoting *Brown*, 479 U. S., at 542). It is improbable the ju-

rors believed that the parties were engaging in an exercise in futility when respondent presented (and both counsel later discussed) his mitigating evidence in open court.

Arguments by the prosecution and the defense assumed the evidence was relevant. The prosecutor initially discussed the various factors that were to guide the jury. He referred to factor (k) as "a catchall." App. 153. He then discussed respondent's religious experience in some detail. With respect to whether this experience fit within factor (k), he indicated: "I'm not sure it really fits in there. I'm not sure it really fits in any of them. But I think it appears to be a proper subject of consideration." *Id.*, at 154. These seemingly contradictory statements are explained by the prosecutor's following comments.

The prosecutor suggested (quite understandably on the record) that respondent's religious evidence was weak. He stated: "You know, first of all, it's no secret that the evidence upon which the defendant's religious experience rests is somewhat shaky." *Ibid.* He also opined that the experience had to be taken "with a grain of salt." *Id.*, at 155. The jury would have realized that, when the prosecutor suggested respondent's religious experience did not fit within factor (k), he was discussing the persuasiveness of the evidence, not the jury's ability to consider it. After all, he thought religion was "a proper subject of consideration." *Id.*, at 154.

The prosecutor then discussed how the jury should weigh respondent's "religious awakening":

> "I suppose you can say it would be appropriate because—in this fashion: The defendant may be of value to the community later. You recall the people talking about how he would have the opportunity to work with other prisoners in prison. And I think that value to the community is something that you have to weigh in. There's something to that.
>
> "On the other hand, the fact that someone has religion as opposed to someone doesn't should be no grounds for

> either giving or withholding life. I mean let's turn it around and look at the other side of the coin. Suppose someone said he didn't belong to a church and didn't talk to a minister. Would that man deserve to die merely because of that? So if he says he has religion, does he deserve the other penalty, life? I don't think that that should be an influencing factor at all in that respect. I don't think the law contemplates that and I don't think it's right." *Id.*, at 155.

These remarks confirmed to the jury that it should analyze respondent's future potential, his future "value to the community." *Ibid.* This is what respondent himself wanted it to do. And while the prosecutor commented that the law did not contemplate jury consideration of respondent's religious conversion, respondent did not argue that the jury should consider the mere fact that he had discovered religion. Rather, as manifested by his arguments on appeal, respondent wanted to use this religious evidence to demonstrate his future "value to the community," not to illustrate his past religious awakening. Nothing the prosecutor said would have convinced the jury that it was forbidden from even considering respondent's religious conversion, though surely the jury could discount it; and nothing the prosecutor said would have led the jury to think it could not consider respondent's future potential, especially since he indicated that this is exactly what the jury had "to weigh" in its deliberation. *Ibid.*

After the prosecutor concluded his arguments, the trial judge allowed respondent to speak on his own behalf. Respondent, while not showing any remorse, suggested that life imprisonment offered "an opportunity to achieve goals and try to better yourself." *Id.*, at 163. He also stated: "I myself would really like to have my life and try to improve myself." *Id.*, at 164. Respondent's personal pleas were consistent with a trial in which the jury would assess his future prospects in determining what sentence to impose.

Defense counsel's closing arguments confirm this analysis. To be sure, commenting on the mitigating evidence, he initially indicated: "I'm not going to insult you by telling you I think [the mitigating evidence] excuses in any way what happened here. That is not the reason I asked these people to come in." *Id.*, at 166. Read in context defense counsel's remarks did not imply the jury should ignore the mitigating evidence. Rather, conforming to the dichotomy within factor (k) itself, his remarks merely distinguished between a legal excuse and an extenuating circumstance. Cf. Cal. Penal Code Ann. § 190.3(k) ("[a]ny other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime").

That defense counsel did, in fact, want the jury to take into account respondent's future potential became manifest near the end of his argument. He suggested that the "people who came in here [and] told you about [respondent]" provided the jury with "a game plan" for what respondent could do with his life. App. 170. He continued: "We're just suggesting the tip of the iceberg because who knows in 20, 30, 40, 50 years what sorts of things he can do, as he fits into the system, as he learns to set his goals, to contribute something in whatever way he can." *Ibid.* This would have left the jury believing it could and should contemplate respondent's potential.

Other instructions from the trial court make it quite implausible that the jury would deem itself foreclosed from considering respondent's full case in mitigation. Before enumerating specific factors for consideration—factors including the circumstances of the crime, the defendant's age, and "[t]he presence or absence of any prior felony conviction," *id.*, at 184, as well as the factor (k) catchall—the judge told the jury: "In determining which penalty is to be imposed on the defendant you shall consider all of the evidence which has been received during any part of the trial of this case,

except as you may be hereafter instructed." *Id.*, at 183. After listing the factors, he indicated:

> "After having heard all of the evidence and after having heard and considered the arguments of counsel, you shall consider, take into account and be guided by the applicable factors of aggravating and mitigating circumstances upon which you have been instructed.
>
> "If you conclude that the aggravating circumstances outweigh the mitigating circumstances, you shall impose a sentence of death. However, if you determine that the mitigating circumstances outweigh the aggravating circumstances, you shall impose a sentence of confinement in the state prison for life without the possibility of parole." *Id.*, at 185.

The judge then gave a supplemental instruction regarding aggravating and mitigating factors:

> "I have previously read to you the list of aggravating circumstances which the law permits you to consider if you find that any of them is established by the evidence. These are the only aggravating circumstances that you may consider. You are not allowed to take account of any other facts or circumstances as the basis for deciding that the death penalty would be an appropriate punishment in this case.
>
> "However, the mitigating circumstances which I have read for your consideration are given to you merely as examples of some of the factors that you may take into account as reasons for deciding not to impose a death penalty or a death sentence upon Mr. Belmontes. You should pay careful attention to each of these factors. Any one of them standing alone may support a decision that death is not the appropriate punishment in this case." *Id.*, at 185–186.

Given the evidence and arguments presented to the jury, these instructions eliminate any reasonable likelihood that a

juror would consider respondent's future prospects to be beyond the bounds of proper consideration. The judge told the jury to consider "all of the evidence," and "all of the evidence" included respondent's forward-looking mitigation case. While the judge did end his broad command to appraise all the evidence with the qualifier "except as you may be hereafter instructed," *id.*, at 183, he did not later instruct the jury that it should disregard respondent's future potential in prison. The jury could not fairly read the limitation in the instruction to apply to respondent's central mitigation theory. By contrast, in response to a juror's question, the trial judge specifically instructed the jury not to consider whether respondent could receive psychiatric treatment while in prison.

The sharp contrast between the court's instruction on aggravation (that only enumerated factors could be considered) and its instruction on mitigation (that listed factors were "merely . . . examples," *id.*, at 186) made it clear that the jury was to take a broad view of mitigating evidence. Coming back to back, the instructions conveyed the message that the jury should weigh the finite aggravators against the potentially infinite mitigators. That the trial judge told the jury to "pay careful attention" to the listed mitigating factors, *ibid.*, moreover, did not compel the jury to give them sole consideration. For this to be the case, the jury would have had to fail to take the judge at his word. The judge did not advise the jury to pay exclusive attention to the listed mitigating circumstances, and he had told the jury that these circumstances were simply examples.

It is implausible that the jury supposed that past deeds pointing to a constructive future could not "extenuat[e] the gravity of the crime," as required by factor (k), much less that such evidence could not be considered at all. *Boyde* concludes that in jury deliberations "commonsense understanding of the instructions in the light of all that has taken place at the trial [is] likely to prevail over technical hairsplit-

ting." 494 U. S., at 381. Here, far from encouraging the jury to ignore the defense's central evidence, the instructions supported giving it due weight.

In concluding otherwise, the Court of Appeals cited queries from some of the jurors as evidence of confusion. Although the jury's initial question is not in the record, it appeared to ask the judge about the consequences of failing to reach a unanimous verdict. Cf. 414 F. 3d, at 1135. In response, the judge reread portions of the instructions and stated that "all 12 jurors must agree, if you can." App. 190. Before the judge sent the jury back for further deliberation, the following exchange took place:

> "JUROR HERN: The statement about the aggravation and mitigation of the circumstances, now, that was the listing?
>
> "THE COURT: That was the listing, yes, ma'am.
>
> "JUROR HERN: Of those certain factors we were to decide one or the other and then balance the sheet?
>
> "THE COURT: That is right. It is a balancing process. Mr. Meyer?
>
> "JUROR MEYER: A specific question, would this be an either/or situation, not a one, if you cannot the other?
>
> "THE COURT: No. It is not that.
>
> "JUROR MEYER: It is an either/or situation?
>
> "THE COURT: Exactly. If you can make that either/or decision. If you cannot, then I will discharge you.
>
> "JUROR HAILSTONE: Could I ask a question? I don't know if it is permissible. Is it possible that he could have psychiatric treatment during this time?
>
> "THE COURT: That is something you cannot consider in making your decision." *Id.*, at 191.

The Court of Appeals decided Juror Hern's questions indicated she thought (incorrectly) that only listed mitigating factors were on the table—an error, in the Court of Appeals'

view, that should have prompted a clarifying instruction confirming that all the mitigating evidence was relevant. 414 F. 3d, at 1136. The Court of Appeals further supposed the response to Juror Hailstone's question compounded the problem, since psychiatric treatment presumably would be necessary only in aid of future rehabilitation. *Id.*, at 1137.

The Court of Appeals' analysis is flawed. To begin with, attributing to Juror Hern a dilemma over the scope of mitigation is only one way to interpret her questions, and, as the California Supreme Court observed on direct review, it is not necessarily the correct one, see *Belmontes*, 45 Cal. 3d, at 804, 755 P. 2d, at 344. It is at least as likely that the juror was simply asking for clarification about California's overall balancing process, which requires juries to consider and balance enumerated factors (such as age and criminal history) that are labeled neither as mitigating nor as aggravating. As Juror Hern surmised (but sought to clarify), the jury itself must determine the side of the balance on which each listed factor falls. See Cal. Penal Code Ann. § 190.3 (providing that, "[i]n determining the penalty, the trier of fact shall take into account" any relevant listed factors); see generally *Tuilaepa* v. *California*, 512 U. S. 967, 978–979 (1994) (noting that the § 190.3 sentencing factors "do not instruct the sentencer how to weigh any of the facts it finds in deciding upon the ultimate sentence").

Even assuming the Court of Appeals correctly interpreted Juror Hern's questions, the court's conclusion that this juror likely ignored forward-looking evidence presupposes what it purports to establish, namely, that forward-looking evidence could not fall within factor (k). As discussed earlier, nothing barred the jury from viewing respondent's future prospects as "extenuat[ing] the gravity of the crime," so nothing barred it from considering such evidence under the rubric of the "listing." As for Juror Hailstone's psychiatric-care question, this inquiry shows that, if anything, the jurors were considering respondent's potential. The trial court's

response, far from implying a broad prohibition on forward-looking inferences, was readily explicable by the absence of any evidence in the record regarding psychiatric care.

In view of our analysis and disposition in this case it is unnecessary to address an argument for reversing the Court of Appeals based on the Court's holding in *Johnson* v. *Texas*, 509 U. S. 350 (1993), a subject raised by Judge O'Scannlain in his separate opinion in the Court of Appeals. See 414 F. 3d, at 1141–1142 (opinion concurring in part and dissenting in part).

IV

In this case, as in *Boyde* and as in *Payton*, the jury heard mitigating evidence, the trial court directed the jury to consider all the evidence presented, and the parties addressed the mitigating evidence in their closing arguments. This Court's cases establish, as a general rule, that a jury in such circumstances is not reasonably likely to believe itself barred from considering the defense's evidence as a factor "extenuat[ing] the gravity of the crime." The factor (k) instruction is consistent with the constitutional right to present mitigating evidence in capital sentencing proceedings.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring.

I adhere to my view that limiting a jury's discretion to consider all mitigating evidence does not violate the Eighth Amendment. See *Walton* v. *Arizona*, 497 U. S. 639, 673 (1990) (SCALIA, J., concurring in part and concurring in judgment). Even accepting the Court's jurisprudence to the contrary, however, this is arguably an easy case, given our reiteration in *Johnson* v. *Texas*, 509 U. S. 350, 372 (1993), that a jury need only "be able to consider in some manner all of

a defendant's relevant mitigating evidence," and need not "be able to give effect to mitigating evidence in every conceivable manner in which the evidence might be relevant." But since petitioner has not relied on *Johnson*, as Judge O'Scannlain did below, see *Belmontes* v. *Brown*, 414 F. 3d 1094, 1141–1142 (CA9 2005) (opinion concurring in part and dissenting in part), I am content to join in full the Court's opinion, which correctly applies *Boyde* v. *California*, 494 U. S. 370 (1990).

JUSTICE STEVENS, with whom JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

In *Lockett* v. *Ohio*, 438 U. S. 586 (1978), the Court set aside Ohio's death penalty statute as unconstitutional because it unduly restricted the mitigating evidence that a jury could consider in deciding whether to impose the death penalty. In his opinion announcing the judgment, Chief Justice Burger wrote:

> "There is no perfect procedure for deciding in which cases governmental authority should be used to impose death. But a statute that prevents the sentencer in all capital cases from giving independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation creates the risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty. When the choice is between life and death, that risk is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments." *Id.*, at 605 (plurality opinion).

The respondent here, Fernando Belmontes, was sentenced to death in 1982, a scant four years after *Lockett*. See *People* v. *Belmontes*, 45 Cal. 3d 744, 755 P. 2d 310 (1988). Yet at the time of his sentencing, there remained significant residual confusion as to whether the Constitution obligated States to permit juries to consider evidence that, while not

extenuating the defendant's culpability for the crime, might nevertheless call for a sentence less than death. Cf. *People* v. *Easley*, 34 Cal. 3d 858, 875–880, 671 P. 2d 813, 823–827 (1983) (noting arguments on both sides).

The California death penalty statute in effect in 1982 quite plainly rested on the assumption that California could preclude the consideration of such evidence. The statute commanded that the jury "shall impose" a death sentence if aggravating circumstances outweigh mitigating circumstances, and limited the jury's inquiry to 11 discrete categories of evidence. See Cal. Penal Code Ann. § 190.3 (West 1988). Other than factors relating to the defendant's age and prior criminal record, every one of those categories relates to the severity of the crime of which the defendant was convicted.[1]

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[1] Those categories are:

"(a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true . . . .

"(b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence.

"(c) The presence or absence of any prior felony conviction.

"(d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

"(e) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.

"(f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.

"(g) Whether or not defendant acted under extreme duress or under the substantial domination of another person.

"(h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the affects of intoxication.

"(i) The age of the defendant at the time of the crime.

"(j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.

And while the eleventh catchall "factor (k)" authorized consideration of "[a]ny other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime," § 190.3(k), factor (k)'s restrictive language sent the unmistakable message that California juries could properly give no mitigating weight to evidence that did not extenuate the severity of the crime.

Just a year after respondent's sentencing the California Supreme Court evinced considerable discomfort with factor (k). In *People* v. *Easley*, after discussing the possible unconstitutionality of the penalty phase instructions, the court inserted a critical footnote effectively amending factor (k) and expanding the evidence that a California jury could properly consider in deciding whether to impose a death sentence:

> "In order to avoid potential misunderstanding in the future, trial courts—in instructing on [factor (k)]—should inform the jury that it may consider as a mitigating factor 'any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime' and *any other* '*aspect of [the] defendant's character or record . . . that the defendant proffers as a basis for a sentence less than* death.'" 34 Cal. 3d, at 878, n. 10, 671 P. 2d, at 826, n. 10 (emphasis added).[2]

"(k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." Cal. Penal Code Ann. § 190.3 (West 1988).

The 1988 version of § 190.3 also provided that "[a]fter having heard and received all of the evidence, . . . the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section," and "shall determine whether the penalty shall be death or confinement in state prison for a term of life without the possibility of parole."

[2] The California Legislature also responded to the confusion by amending factor (k) to include "any sympathetic or other aspect of the defendant's character or record that the defendant offers as a basis for a sentence

Although *Easley* came too late to help respondent, the California Supreme Court's evident concern that capital juries must be permitted to consider evidence beyond that which "extenuates the gravity of the crime" proved prescient. In *Skipper* v. *South Carolina*, 476 U. S. 1 (1986)—decided two years before the California Supreme Court affirmed respondent's conviction and therefore fully applicable here, see *Griffith* v. *Kentucky*, 479 U. S. 314, 322–323 (1987)—we expressly rejected the argument, presented in Justice Powell's separate opinion, that the States retained the authority to determine what mitigating evidence is relevant "as long as they do not foreclose consideration of factors that may tend to reduce the defendant's culpability for his crime," see *Skipper*, 476 U. S., at 11 (opinion concurring in judgment). Apart from the traditional sentencing factors such as "[e]vidence concerning the degree of the defendant's participation in the crime, or his age and emotional history," Justice Powell would have held that States could properly exclude evidence during a capital sentencing proceeding. *Id.*, at 13. The majority, however, took a more expansive view. Although it recognized that the probative force of Skipper's excluded evidence "would not relate specifically to petitioner's culpability *for the crime he committed*, [there was] no question but that such inferences would be 'mitigating' in the sense that they might serve 'as a basis for a sentence less than death.'" *Id.*, at 4–5 (quoting *Lockett*, 438 U. S., at 604 (plurality opinion); emphasis added). After *Skipper*, then, the law was clear: A capital jury must be allowed to consider a broader category of mitigating evidence than normally relevant in noncapital proceedings.

Respondent was sentenced, however, before *Easley* rewrote factor (k) and before *Skipper* resolved the confusion

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less than death, whether or not related to the offense for which he is on trial." Cal. Jury Instr., Crim., No. 8.85(k) (2005) (brackets omitted). That amendment confirms the view that the category of evidence that may provide the basis for a sentence other than death is much broader than the category described in factor (k).

over whether States had the constitutional latitude to restrict evidence that did not "tend to reduce the defendant's culpability for his crime," 476 U. S., at 11 (Powell, J., concurring in judgment). As the following review of the record will underscore, that confusion pervaded every aspect of respondent's sentencing hearing. It addled the trial judge, the prosecutor, defense counsel, and—inevitably—the jurors themselves.

I

At the sentencing hearing, after the prosecution put on its case—which consisted mainly of evidence of respondent's previous conduct, see *Belmontes*, 45 Cal. 3d, at 795, 755 P. 2d, at 338–339—respondent countered with testimony from his grandfather and his mother. That testimony focused almost entirely on respondent's background: His father drank to excess and savagely beat his wife; his parents were divorced when he was 9 or 10 years old; his mother remarried, but again divorced when respondent was 14 or 15 years old; at this point respondent became difficult to control, and, in 1979, he was sent to the California Youth Authority (Youth Authority); after his release, respondent did not live with his mother, although he kept in touch with her by telephone and was very close with his 15-year-old sister. See generally App. 5–22.

Next, the jury heard testimony from Robert Martinez and his wife Darlene, both of whom testified that they were close friends with respondent but admitted that they had seen him only once after he was released from the Youth Authority. *Id.*, at 26–27, 35. Robert further testified that respondent was the best man at his wedding and that, prior to his wedding, the two of them would spend a lot of time together, working on Martinez's car, drinking beer, and smoking marijuana. *Id.*, at 25, 28. The focus of Darlene's testimony was that she was a born-again Christian, and that, when respondent visited Darlene and her husband after his release from the Youth Authority, he told her that he was also a born-again Christian. *Id.*, at 35–36.

Respondent then testified on his own behalf. When asked about his childhood, respondent answered that he "can't use it as a crutch to say I am in a situation right now, I'm here now because of that." *Id.*, at 40. He went on to describe his relationships with his father and grandfather and to relate his experience at the Youth Authority. *Id.*, at 41–45. Respondent testified that, while at the Youth Authority, he became involved in a Christian program and developed a relationship with his sponsors in that program, Beverly and Fred Haro. *Id.*, at 46–48. Upon his release, however, respondent started having problems and abandoned his religious commitment, something he had not yet regained fully at the time of the sentencing hearing. *Id.*, at 53–54. Respondent then described his life in prison and stated that, were he given a life sentence, he would attempt to make a positive contribution to society. *Id.*, at 55–58. On cross-examination, most of the prosecutor's questions focused on the sincerity of respondent's religious commitment. *Id.*, at 58–65.

The following day, respondent presented testimony from Reverend Dale Barrett and Don Miller, both ministers who worked at the Youth Authority location where respondent was held. Reverend Barrett described the Youth Authority's M–2 program through which respondent was matched with the Haros. *Id.*, at 74–76. He then testified about respondent's involvement with the church and the M–2 program, and how his interactions with respondent led him to believe that he was "salvageable." *Id.*, at 76–82. Miller similarly testified about respondent's participation in the program and his belief that respondent would be adept at speaking with other prisoners about accepting religion. *Id.*, at 92, 95–96; see also *id.*, at 96 (testifying that respondent would "[d]efinitely . . . be used in the prison system for this sort of activity").

Finally, the jury heard testimony from respondent's sponsors in the M–2 program, Fred and Beverly Haro. The

Haros described meeting respondent and their experiences with him. See generally *id.*, at 99–104; 110–112. They also testified about how close they had grown to respondent and about respondent's embrace of religion. *Id.*, at 101–102; 112–113.

Taken as a whole, the sentencing testimony supports three conclusions: First, excepting questions concerning the sincerity of respondent's religious convictions, there was no significant dispute about the credibility of the witnesses; second, little if any of the testimony extenuated the severity of respondent's crime; and third, the testimony afforded the jury a principled basis for imposing a sentence other than death.

II

The prosecutor began his closing argument at the penalty phase by describing "th[e] listing of aggravating and mitigating circumstances" and instructing the jury that it must "weigh one against the other." *Id.*, at 148. While he observed that "there is a proper place for sympathy and passion," *ibid.*, the prosecutor emphasized that the jury could only consider "the kind of sympathy the instruction tells you to consider [*i. e.*, sympathy that] naturally arises or properly arises *from the factors in aggravation and mitigation*," *id.*, at 149 (emphasis added). He repeated to the jury that its duty was to "simpl[y] weig[h]" certain factors that the judge "will tell you that you may take into account," *id.*, at 150–151, and he went through those listed factors one by one, carefully discussing the evidence that supported each factor, *id.*, at 151–157.

When the prosecutor turned to factor (k), he directly addressed the theory "that the defendant's religious experience is within that catchall that relates to the defendant at the time he committed the crime, extenuates the gravity of the crime." *Id.*, at 154. The prosecutor expressed doubt that the jury could consider the evidence at all, stating "I'm not sure it really fits in there. I'm not sure it really fits in any

of them. But I think it appears to be a proper subject of consideration." *Ibid.* And again, after discussing the evidence supporting respondent's religious experience, the prosecutor questioned: "[I]s a religious awakening a basis for determining penalty? That's really the issue, how much does that weigh, or does it weigh on one side or the other." *Id.*, at 155. Ultimately, the prosecutor concluded: "I suppose you can say it would be appropriate because—in this fashion: The defendant may be of value to the community later. . . . And I think that value to the community is something that you have to weigh in. There's something to that." *Ibid.* But immediately thereafter, the prosecutor told the jury:

> "On the other hand, the fact that someone has religion as opposed to someone doesn't should be no grounds for either giving or withholding life. . . . So if he says he has religion, does he deserve the other penalty, life? I don't think that that should be an influencing factor at all in that respect. *I don't think the law contemplates that and I don't think it's right.*" *Ibid.* (emphasis added).

In conclusion, the prosecutor described the circumstances of the crime and asserted that "[a] dreadful crime requires a dreadful penalty . . . ." *Id.*, at 160.

Following the prosecutor's closing argument, the trial judge allowed respondent to address the jury directly. Respondent again stated that he could not use his childhood as a crutch to explain his mistakes, and he said that his Christianity, too, could not be used as a crutch. *Id.*, at 162. Respondent then asked to keep his life, explaining that he understood that he had to pay for the victim's death, but that he wanted the opportunity to try to improve himself in the future. *Id.*, at 163.

Respondent's attorney, John Schick, then addressed the jury. He made no effort to persuade the jurors that the mitigating evidence somehow extenuated the severity of the

crime. On the contrary, he said "I'm not going to insult you by telling you I think [the mitigating evidence] excuses in any way what happened here. That is not the reason I asked these people to come in." *Id.*, at 166. Instead, he argued that respondent might be able to make a positive contribution in a prison environment. He spoke about the way that respondent improved after he met Beverly and Fred Haro and about the way that respondent's religion shaped him, observing that religion plays a "very, very vital function . . . in anybody's life." *Ibid.* But Schick took care to emphasize that religion "does not excuse" the murder; rather, the point of that mitigating evidence was to let the jury "know something about the man." *Id.*, at 167, 166. He admitted that respondent "cannot make it on the outside," *id.*, at 167, recognized that respondent needed to be punished, and asked that the jury impose life in prison, a punishment "that has meaning, that has teeth in it . . . ," *id.*, at 169. Critically, Schick contended that life in prison was an appropriate sentence because respondent could, if given the chance, "contribute something in whatever way he can." *Id.*, at 170.

In sum, both counsel agreed that *none* of the mitigating evidence could detract from the gravity of the crime, and defense counsel even insisted that it would "insult" the jury to suggest that the mitigating evidence "excuses in any way what happened." *Id.*, at 166.

III

At a conference on jury instructions with the two counsel, the trial judge plainly indicated that he believed that factor (k) circumscribed the mitigating evidence the jury could consider. The judge lifted the principal jury instructions verbatim from 7 of the 11 traditional sentencing factors set forth in the statute, App. 184, but he refused defense counsel's request to give the jury a separate list of potential mitigating

factors, *id.*, at 142–143. Among those requested were two that specifically instructed the jury to consider respondent's ability to perform constructive work in prison and to live in confinement without acts of violence. See Brief for Respondent 5, n. 1. Those instructions would have been entirely proper—indeed, probably mandated—under our holding in *Skipper*. But the prosecutor, not having the benefit of *Skipper*, argued to the judge that "none [of the proposed mitigating instructions] here . . . relates to circumstances concerning the crime. I can't conceal the fact that I think that is the determinative factor in this case." App. 142. Agreeing, the judge refused to include the mitigating instructions, making the astonishing statement that the instructions already "seem to be a little over-laden with the factors in mitigation rather than in aggravation." *Ibid.*

Of particular importance, the judge modified defense counsel's request that the jury be told that the instructions did not contain an exhaustive list of mitigating factors. *Id.*, at 141. While he did give such an instruction, *ante*, at 20, he refused to include the following requested reference to nonstatutory factors: "'You may also consider any other circumstances [relating to the case or the defendant, Mr. Belmontes,] as reasons for not imposing the death sentence.'" Brief for Respondent 25–26; contra, App. 186. The judge thus expressly *declined* to invite the jury to weigh "potentially infinite mitigators," contrary to the Court's assumption today, see *ante*, at 21. A more accurate summary of his rulings is that the jury could weigh nonstatutory circumstances—but only if they extenuated the severity of respondent's offense.

IV

The next morning, the trial judge gave the jurors their instructions. He opened with the unyielding admonition that "[y]ou must accept and follow the rules of law as I state them to you," App. 175, and explained that he was required

to read the instructions aloud even though they would have a written copy available during their deliberations, *ibid.*

After reading a set of boilerplate instructions, *id.*, at 176–183, the judge turned to the subject of "determining which penalty is to be imposed on the defendant," *id.*, at 183. He told the jury to "consider all of the evidence . . . *except as you may be hereafter instructed*," *ibid.* (emphasis added), and then stated: "You shall consider, take into account and be guided by the following factors, if applicable," *id.*, at 183–184. He then proceeded to repeat verbatim 7 of the 11 factors set forth in the statute. *Id.*, at 184. Except for the reference to the "age of the defendant at the time of the crime," *ibid.*, every one of those factors related to the severity of the crime itself. See n. 1, *supra*. The last of them, the factor (k) instruction, focused the jury's attention on any circumstance that "extenuates the gravity of the crime even though it is not a legal excuse for the crime." *Ibid.* No factor permitted the jury to consider "any other 'aspect of [the] defendant's character or record . . . that the defendant proffers as a basis for a sentence less than death.'" *Easley*, 34 Cal. 3d, at 878, n. 10, 671 P. 2d, at 826, n. 10 (quoting *Lockett*, 438 U. S., at 604 (plurality opinion)).

Emphasizing the importance of the listing of aggravating and mitigating circumstances, the judge next instructed the jury that it "shall consider, take into account and be guided *by the applicable factors* of aggravating and mitigating circumstances *upon which you have been instructed*." App. 185 (emphasis added). In other words, in reaching its decision, the jury was to consider each of the "applicable factors"—here, the seven factors the judge just finished reading—and no others.

As the Court points out, *ante*, at 21, the judge did tell the jury that "the mitigating circumstances which I have read for your consideration are given to you merely as examples of some of the factors that you may take into account as

reasons for deciding not to impose . . . a death sentence . . . ," App. 186. But immediately afterwards, he instructed the jury to "pay careful attention to each of *these factors*. Any one of them standing alone may support a decision that death is not the appropriate punishment in this case." *Ibid.* (emphasis added). Since none of "these factors" (save for the age of the defendant) encompassed any mitigating circumstance unrelated to the severity of the crime, the most natural reading of the instruction is that any mitigating factor *that lessens the severity of the offense* may support a sentence other than death. On this view, any other mitigating circumstance is simply irrelevant to (in the prosecutor's words) the "simple weighing" the jury was tasked with performing. *Id.*, at 150.

V

Questions asked by at least six different jurors during almost two full days of deliberation gave the judge an ample opportunity to clarify that the testimony offered on behalf of respondent, if credited by the jury, provided a permissible basis for imposing a sentence other than death. Far from eliminating their obvious confusion, his responses cemented the impression that the jurors' lone duty was to weigh specified, limited statutory factors against each other.

After a lunch break, the judge reconvened the jury to answer a question that does not appear in the record; in response, the judge merely reread instructions telling the jury that it "must agree, if [it] can," and that it "shall consider, take into account and be guided by the applicable factors of aggravating and mitigating circumstances *upon which you have been instructed*." *Id.*, at 185, 188–189 (emphasis added). Because all of those factors were traditional sentencing factors, and because none of them permitted consideration of *Skipper*-type mitigating evidence, the judge's response was the functional equivalent of yet another admonition to disregard most of respondent's evidence.

After a colloquy between the judge and four different jurors (Hailstone, Wilson, Norton, and Huckabay) about the likelihood of reaching a unanimous verdict,[3] other jurors asked the judge a series of questions reflecting a concern about whether it was proper to consider aggravating or mitigating circumstances other than those specifically listed in his instructions:

> "JUROR HERN: The statement about the aggravation and mitigation of the circumstances, now, that was the listing?
>
> "THE COURT: That was the listing, yes, ma'am.
>
> "JUROR HERN: Of those certain factors we were to decide one or the other and then balance the sheet?
>
> "THE COURT: That is right. It is a balancing process. Mr. Meyer?
>
> "JUROR MEYER: A specific question, would this be an either/or situation, not a one, if you cannot the other?
>
> "THE COURT: No. It is not that.
>
> "JUROR MEYER: It is an either/or situation?

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[3] "JUROR HAILSTONE: If we can't, Judge, what happens?

"THE COURT: I can't tell you that.

"JUROR WILSON: That is what we wanted to know.

"THE COURT: Okay. I know what will happen, but I can't tell you what will happen.

"MR. SCHICK: Maybe we should inquire whether the jury could reach a verdict.

"THE COURT: Do you think, Mr. Norton, you will be able to make a decision in this matter?

"JUROR HAILSTONE: Not the way it is going.

"JUROR NORTON: That is tough, yes.

"THE COURT: Do you think if I allow you to continue to discuss the matter and for you to go over the instructions again with one another, that the possibility of making a decision is there?

"JUROR NORTON: I believe there is a possibility.

"JUROR HUCKABAY: We did need more time.

"THE COURT: I think so. I think you need more time." App. 190–191.

> "THE COURT: Exactly. If you can make that either/or decision. If you cannot, then I will discharge you.
>
> "JUROR HAILSTONE: Could I ask a question? I don't know if it is permissible. Is it possible that he could have psychiatric treatment during this time?
>
> "THE COURT: That is something you cannot consider in making your decision." App. 191.

The judge's responses strongly suggest that the "listing"—the listed statutory factors—was all that the jury could properly consider when "balanc[ing] the sheet." See n. 1, *supra*. But it is difficult, if not impossible, to see how evidence relating to future conduct even arguably "extenuate[d] the gravity of the crime"[4] under factor (k), and none of those listed factors gave the jury the chance to consider whether respondent might redeem himself in prison. Cf. *Brown* v. *Payton*, 544 U. S. 133, 157 (2005) (SOUTER, J., dissenting) ("[I]t would be more than a stretch to say that the seriousness of the crime itself is affected by a defendant's subsequent experience"). And rather than inviting an open-ended review of mitigating factors that would include consideration of the defendant's possible future behavior in prison, the judge's answers emphasized the constraints on the "either/or" decision the jurors had to make.[5]

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[4] *Skipper* v. *South Carolina*, 476 U. S. 1, 4 (1986), recognized that a defendant's potential good behavior in the future would not relate to his "culpability for the crime he committed." Even the concurrence agreed: "Almost by definition," it reasoned, a prisoner's good behavior "neither excuses the defendant's crime nor reduces his responsibility for its commission." *Id.*, at 12 (Powell, J., concurring in judgment).

[5] When Juror Hailstone asked the judge about a particular piece of forward-looking evidence—the possibility that respondent would get psychiatric treatment in prison—the judge told the jury that it could not consider that evidence in making its decision. The judge's answer, while legally correct, lent further support to the conclusion that respondent's future conduct in a structured prison environment was not relevant because it did not fall within any of the listed factors.

The arguments of counsel, the actual instructions to the jury, and this colloquy all support the conclusion that the jurors understood their task was to run through the listed statutory factors and weigh them against each other to determine whether respondent should be sentenced to death. Very little of respondent's evidence, however, even arguably "extenuate[d] the gravity of the crime." In my judgment, it is for that reason much more likely than not that the jury believed that the law forbade it from giving that evidence any weight at all. The Court of Appeals therefore correctly set aside respondent's death sentence. See *Boyde* v. *California*, 494 U. S. 370, 380 (1990) (plurality opinion) (requiring that a defendant show only that "there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence").

VI

Nothing in the Court's opinion in *Boyde* upsets my view that respondent's death sentence cannot stand. Over the dissent of four Justices, the Court in *Boyde* both adopted a new "legal standard for reviewing jury instructions claimed to restrict impermissibly a jury's consideration of relevant evidence," *id.*, at 378, and approved a blatantly atextual interpretation of the unadorned factor (k) instruction, *id.*, at 382, and n. 5. Applying its new standard and its dubious reading of factor (k), the Court held that there was "not a reasonable likelihood that Boyde's jurors interpreted the trial court's instructions to prevent consideration of mitigating evidence of background and character." *Id.*, at 381.

The Court rejected Boyde's argument that factor (k) made it impossible for the jury to consider testimony that Boyde had won a prize for dance choreography while in prison, which Boyde argued was *Skipper*-type evidence relating to whether "he could lead a useful life behind bars," 494 U. S., at 382, n. 5. But the Court did not hold or suggest that factor (k) allowed for the consideration of *Skipper*-type evi-

dence. Instead, the Court found that the evidence of his dance choreography talents was presented as part of his "overall strategy to portray himself *as less culpable* than other defendants due to his disadvantaged background and his character strengths," 494 U. S., at 382, n. 5 (emphasis added), and therefore fell within the ambit of factor (k). Thus, although the *Boyde* opinion does not state so explicitly, it assumes that the factor (k) instruction would not permit the jury to consider *Skipper*-type "evidence of postcrime good prison behavior to show that [a defendant] would not pose a danger to the prison community if sentenced to life imprisonment rather than death." 494 U. S., at 382, n. 5; see also *Skipper*, 476 U. S., at 4 (recognizing that inferences regarding a defendant's "probable future conduct if sentenced to life in prison . . . would not relate specifically to [the defendant's] culpability for the crime he committed"); *Payton*, 544 U. S., at 164 (SOUTER, J., dissenting) ("*Boyde* did not purport to hold that factor (k) naturally called for consideration of postcrime changes of fundamental views").

Here, respondent contends that there is a reasonable likelihood that the judge's instructions prevented the jury from considering precrime, forward-looking mitigation evidence regarding the possibility that he would lead a constructive life in a prison setting. Not only does the Court's opinion in *Boyde* fail to support the improbable argument that respondent's mitigating evidence falls within factor (k)'s purview, but its reasoning is entirely consistent with the Court of Appeals' contrary conclusion.

Similarly, the Court's recent decision in *Payton* has little bearing here. In *Payton*, we granted certiorari to decide whether the Ninth Circuit's decision affirming the District Court's grant of habeas relief "was contrary to the limits on federal habeas review imposed by 28 U. S. C. § 2254(d)." 544 U. S., at 136. In concluding that it was, the Court relied heavily on the deferential standard of habeas review established by the Antiterrorism and Effective Death Penalty Act

of 1996 (AEDPA), 110 Stat. 1214. See 544 U. S., at 141. And JUSTICE BREYER specifically stated that he only joined the five-Justice majority because "this is a case in which Congress' instruction to defer to the reasonable conclusions of state-court judges makes a critical difference," *id.*, at 148 (concurring opinion), explaining that, were he a California state judge, he "would likely hold that Payton's penalty-phase proceedings violated the Eighth Amendment [because] there might well have been a reasonable likelihood that Payton's jury interpreted factor (k) in a way that prevented it from considering constitutionally relevant mitigating evidence—namely, evidence of his postcrime religious conversion," *ibid.* (citation, alteration, and internal quotation marks omitted). The fact that *Payton* was a case about deference under AEDPA, rather than about a proper understanding of the scope of factor (k), is cause enough to conclude that it does not mandate any specific outcome here.

Indeed, given that respondent's trial occurred the same year and involved the same jury instructions as Payton's, compare 544 U. S., at 156 (SOUTER, J., dissenting) ("'[Y]ou shall consider all of the evidence which has been received during any part of the trial in this case, except as you may be hereafter instructed'"), with App. 183 (same), and because AEDPA does not apply to respondent's case, there are persuasive reasons for concluding that JUSTICE SOUTER's powerful reasoning in *Payton*, rather than the majority's deferential review of a California court's opinion, should guide our decision. In his dissenting opinion, JUSTICE SOUTER pointed out that Payton's trial had occurred both before the California Supreme Court had directed trial judges to supplement the factor (k) instruction and before the legislature had amended it. See 544 U. S., at 158. Without those changes, he correctly concluded, "any claim that factor (k) called for consideration of a defendant's personal development in the wake of his crime was simply at odds with common attitudes and the English language." *Id.*, at 158–159.

Moreover, *Payton* did not deal with a record that discloses actual confusion among jurors, as this record does. See *supra*, at 36–39. Nor did it involve a defense attorney who, bolstering the prosecutor's claim that factor (k) did not allow the jury to consider respondent's religious conversion, refused to "insult" the jury "by telling you I think [the mitigating evidence] excuses in any way what happened here," App. 166. Therefore, even ignoring its significantly different procedural posture, *Payton*, like *Boyde*, falls far short of compelling the result that the Court reaches today.

VII

Instead of accepting that lay jurors would almost certainly give the words "circumstance which extenuates the gravity of the crime" their ordinary meaning, the Court insists that they would have disregarded their instructions and considered evidence that had nothing whatsoever to do with the crime. This conclusion seems to me to rest on an assumption that the jury had an uncanny ability to predict that future opinions would interpret factor (k) to mean something that neither the judge nor the lawyers thought it meant. Surely the more natural inference is that the jury followed its instructions. See *Greer* v. *Miller*, 483 U. S. 756, 766, n. 8 (1987) (describing our "presumption" that juries follow instructions).

The Court's highly technical parsing of factor (k) depends on linguistic distinctions which would only occur to trained lawyers. See, *e. g.*, *ante*, at 19 (calling attention to the "dichotomy within factor (k) . . . between a legal excuse and an extenuating circumstance"). And even the lawyers are confused. The prosecutor in *Payton* believed that "factor (k) d[oes] not permit consideration of postcrime rehabilitation evidence." *Ante*, at 14. While the majority now blithely characterizes this view as "incorrec[t]," *ante*, at 13, it is the natural reading of factor (k), and one that jurors would have been likely to accept. Similarly, present-day

counsel for the State of California expressed confusion at oral argument as to whether it would have been constitutional for the trial judge to instruct the jury that it could not consider any mitigating evidence unless it extenuated the gravity of the crime, see Tr. of Oral Arg. 8–9 (retreating from the statement that "[i]t would appear not to be" constitutional). The Court cannot seriously insist that a group of 12 laypersons had such command of constitutional law that, anticipating *Skipper*, they took into account evidence outside the ambit of their jury instructions.

The Court also apparently believes that when the prosecutor in this case suggested that factor (k) meant exactly what it said, *supra*, at 32, the jury would have taken that as merely a comment on respondent's credibility, *ante*, at 17. But this rests on a clear misreading of the record. Although the prosecutor did argue that respondent lacked sincere religious convictions, he *also* suggested quite powerfully that the law did not permit the jury to consider those convictions, however sincerely held. See App. 155 ("I don't think the law contemplates that *and* I don't think it's right" (emphasis added)). Nor is there any support for the Court's surprising and inherently contradictory view that while the prosecutor here "commented that the law did not contemplate jury consideration of respondent's religious conversion," *ante*, at 18, "*[n]othing the prosecutor said* would have convinced the jury that it was forbidden from even considering respondent's religious conversion," *ibid.* (emphasis added).

Admittedly, as the Court points out, there is a distinction between limiting the jury's consideration to "circumstance[s] *of the crime*" that extenuate its severity, and limiting that consideration to "*any other circumstance* that might excuse the crime," see *ante*, at 15 (internal quotation marks omitted). It is highly unlikely, however, that jurors would note that subtle distinction, and even more unlikely that they would consider it significant. Both interpretations of the phrase focus the jury's attention on the crime, and neither

includes the evidence at issue in *Skipper*, which "[a]lmost by definition . . . neither excuses the defendant's crime nor reduces his responsibility for its commission." 476 U. S., at 12 (Powell, J., concurring in judgment). Read however generously, the factor (k) limitation remains unconstitutional.

The Court makes a similarly unpersuasive argument based on the dubious premise that a juror would understand "remorse" to be a species of postcrime evidence that serves to lessen or excuse the crime itself. Even if that were true, it would not follow that jurors could somehow divine that respondent's evidence of a capacity to redeem himself would both "extenuate his offense and render him less deserving of a death sentence." *Ante*, at 16.[6]

VIII

Unless the jurors who imposed the death sentence somehow guessed at the breadth of the rule first announced in *Lockett*, that sentence was the product of an unconstitutional proceeding. Ironically, both Chief Justice Burger (who wrote the plurality opinion in *Lockett*) and Justice Powell (who joined it) understood the *Lockett* rule to extend only to evidence "that lessens the defendant's culpability for the crime." *Skipper*, 476 U. S., at 12 (Powell, J., joined by Burger, C. J., and Rehnquist, J., concurring in judgment). Given that the authors of *Lockett* themselves disagreed as to its scope, I am not as sanguine as the Court that the lay members of the jury somehow knew, notwithstanding clear jury instructions, that the testimony presented at the sen-

[6] In response to the majority's suggestion that this case may be inconsistent with *Johnson* v. *Texas*, 509 U. S. 350 (1993), *ante*, at 24, I note only that *Johnson* addressed a very different question, namely, whether a jury considering future dangerousness could give adequate weight to a capital defendant's youth. Whatever connection may exist between a defendant's youth and his future dangerousness, there is no connection whatsoever between respondent's evidence that he was capable of redemption and a "circumstance which extenuates the gravity of the crime," Cal. Penal Code Ann. § 190.3(k) (West 1988).

tencing phase of respondent's trial could be part of the "simple weighing" the jury was supposed to undertake.

When the trial judge told the jurors to consider all the evidence "except as you may be hereinafter instructed," App. 183, he directed them to limit their consideration to the traditional sentencing factors set forth in the statute. When the prosecutor told the jurors that "I don't think the law contemplates" that respondent's religion lessened the seriousness of respondent's offense, *id.*, at 155, he reinforced the impression that the jury should confine its deliberations to the listing. And once defense counsel *agreed* with the prosecutor, saying that "I'm not going to insult you by telling you I think [the mitigating evidence] excuses in any way what happened here," *id.*, at 166, surely at least some of the jurors would have doubted the propriety of speculating about respondent's future conduct in prison as a basis for imposing a sentence less than death.

The Court today heaps speculation on speculation to reach the strange conclusion, out of step with our case law, that a properly instructed jury disregarded its instructions and considered evidence that fell outside the narrow confines of factor (k). Holding to the contrary, the Court insists, would reduce two days of sentencing testimony to "a virtual charade," *ante*, at 13 (internal quotation marks omitted)—but in so concluding the Court necessarily finds that the judge's instructions were themselves such a "charade" that the jury paid them no heed. I simply cannot believe that the jurors took it upon themselves to consider testimony they were all but told they were forbidden from considering; in my view, they must at the very least have been confused as to whether the evidence could appropriately be considered. That confusion has created a risk of error sufficient to warrant relief for a man who has spent more than half his life on death row. Cf. *Lackey* v. *Texas*, 514 U. S. 1045 (1995) (STEVENS, J., respecting denial of certiorari). The incremental value to California of carrying out a death sentence at this late

date is far outweighed by the interest in maintaining confidence in the fairness of any proceeding that results in a State's decision to take the life of one of its citizens. See *Gardner* v. *Florida*, 430 U. S. 349, 358 (1977) (plurality opinion).

Accordingly, I respectfully dissent.

Syllabus

LOPEZ *v.* GONZALES, ATTORNEY GENERAL

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 05–547. Argued October 3, 2006—Decided December 5, 2006

The Immigration and Nationality Act (INA) lists as an "aggravated felony" "illicit trafficking in a controlled substance . . . including a drug trafficking crime (as defined in section 924(c) of title 18)," 8 U. S. C. § 1101(a)(43)(B), but does not define "illicit trafficking." Title 18 U. S. C. § 924(c)(2) defines "drug trafficking crime" to include "any felony punishable under the Controlled Substances Act" (CSA). Petitioner Lopez, a legal permanent resident alien, pleaded guilty to South Dakota charges of aiding and abetting another person's possession of cocaine, which state law treated as the equivalent of possessing the drug, a state felony. The Immigration and Naturalization Service began removal proceedings on the ground, *inter alia*, that Lopez's state conviction was for an aggravated felony. The Immigration Judge ultimately ruled that despite the CSA's treatment of Lopez's crime as a misdemeanor, see 21 U. S. C. § 844(a), it was an aggravated felony under the INA owing to its being a felony under state law. The judge ordered Lopez removed in light of 8 U. S. C. § 1229b(a)(3), which provides that the Attorney General's discretion to cancel the removal of a person otherwise deportable does not reach a convict of an aggravated felony. The Board of Immigration Appeals (BIA) affirmed, and the Eighth Circuit affirmed the BIA.

Held: Conduct made a felony under state law but a misdemeanor under the CSA is not a "felony punishable under the Controlled Substances Act" for INA purposes. A state offense comes within the quoted phrase only if it proscribes conduct punishable as a felony under the CSA. The Government argues that possession's felonious character as a state crime is enough to turn it into an aggravated felony under the INA because the CSA punishes possession, albeit as a misdemeanor, while § 924(c)(2) requires only that the offense be punishable, not that it be punishable as a federal felony, so that a prior conviction in state court will satisfy the felony element because the State treats possession that way. This argument is incoherent with any commonsense conception of "illicit trafficking," the term ultimately being defined. Because the statutes in play do not define "trafficking," the Court looks to the term's everyday meaning, *FDIC* v. *Meyer*, 510 U. S. 471, 476, which ordinarily connotes some sort of commercial dealing. Commerce, however, was no part of Lopez's South Dakota offense of helping someone else to pos-

sess, and certainly it is no element of simple possession, with which the State equates that crime. Nor is the anomaly of the Government's reading limited to South Dakota cases: while federal law typically treats trafficking offenses as felonies and nontrafficking offenses as misdemeanors, several States deviate significantly from this pattern. Reading § 924(c) the Government's way, then, would often turn simple possession into trafficking, just what the English language counsels not to expect, and that result makes the Court very wary of the Government's position. Although the Government might still be right, there would have to be some indication that Congress meant to define an aggravated felony of illicit trafficking in an unorthodox and unexpected way. There are good reasons to think it was doing no such thing here. First, an offense that necessarily counts as "illicit trafficking" under the INA is a "drug trafficking crime" under § 924(c), *i. e.*, a "felony punishable under the Controlled Substances Act," § 924(c)(2). To determine what felonies might qualify, the Court naturally looks to the definitions of crimes punishable as felonies under the CSA. If Congress had meant the Court to look to state law, it would have found a much less misleading way to make its point. The Government's argument to the contrary contravenes normal ways of speaking and writing, which demonstrate that "felony punishable under the . . . Act" means "felony punishable as such under the Act" or "felony as defined by the Act," and does not refer to state felonies, so long as they would be punishable at all under the CSA. The Government's argument is not supported by the INA's statement that the term "aggravated felony" "applies to an offense described in this paragraph whether in violation of Federal or State law." 8 U. S. C. § 1101(a)(43). Rather than wrenching the expectations raised by normal English usage, this provision has two perfectly straightforward jobs to do. First, it provides that a generic description of "an offense . . . in this paragraph," one not specifically couched as a state offense or a federal one, covers either one, and, second, it confirms that a state offense whose elements include the elements of a felony punishable under the CSA is an aggravated felony. Thus, if Lopez's state crime actually fell within the general term "illicit trafficking," the state felony conviction would count as an "aggravated felony," regardless of the existence of a federal felony counterpart; and a state offense of possessing more than five grams of cocaine base is an aggravated felony because it is a felony under the CSA, 21 U. S. C. § 844(a). Nothing in the provision in question suggests that Congress changed the meaning of "felony punishable under the [CSA]" when it took that phrase from Title 18 of the U. S. Code and incorporated it into Title 8's definition of "aggravated felony." Yet the Government admits that it has never begun a prosecution under 18 U. S. C. § 924(c)(1)(A) where the underlying "drug trafficking crime"

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was a state felony but a federal misdemeanor. This telling failure in the very context in which the phrase "felony punishable under the [CSA]" appears in the Code belies the Government's claim that its interpretation is the more natural one. Finally, the Government's reading would render the law of alien removal, see 8 U. S. C. § 1229b(a)(3), and the law of sentencing for illegal entry into the country, see United States Sentencing Commission, Guidelines Manual § 2L1.2, dependent on varying state criminal classifications even when Congress has apparently pegged the immigration statutes to the classifications Congress itself chose. Congress would not have incorporated its own statutory scheme of felonies and misdemeanors if it meant courts to ignore it whenever a State chose to punish a given act more heavily. Pp. 52–60.

417 F. 3d 934, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, GINSBURG, BREYER, and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 60.

Robert A. Long, Jr., argued the cause for petitioner. With him on the briefs was *Theodore P. Metzler*.

Deputy Solicitor General Kneedler argued the cause for respondent. With him on the brief were *Solicitor General Clement*, *Assistant Attorneys General Keisler* and *Fisher*, *Deputy Solicitor General Dreeben*, *Patricia A. Millett*, and *Donald E. Keener*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Bar Association by *Michael S. Greco* and *David W. DeBruin*; for the Asian American Justice Center et al. by *Jayashri Srikantiah*; for the Center for Court Innovation et al. by *Nancy Morawetz*; for Former General Counsels of the Immigration and Naturalization Service by *Neal Mollen*; for Human Rights First by *Linda T. Coberly* and *Gene C. Schaerr*; and for the NYSDA Immigrant Defense Project et al. by *Christopher J. Meade*, *Steven R. Shapiro*, *Lucas Guttentag*, *Marianne C. Yang*, and *Manuel D. Vargas*.

Briefs of *amici curiae* urging affirmance were filed for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *R. Ted Cruz*, Solicitor General, *Kent C. Sullivan*, First Assistant Attorney General, *Don Clemmer*, Deputy Attorney General, and *Amy Warr*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Mike Beebe* of Arkansas, *John W. Suthers* of Colorado, *Carl C. Danberg* of Delaware, *Lawrence Wasden* of Idaho, *Phill Kline* of Kansas,

JUSTICE SOUTER delivered the opinion of the Court.

The question raised is whether conduct made a felony under state law but a misdemeanor under the Controlled Substances Act is a "felony punishable under the Controlled Substances Act." 18 U. S. C. § 924(c)(2). We hold it is not.

I

A

The Immigration and Nationality Act (INA) defines the term "aggravated felony" by a list that mentions "illicit trafficking in a controlled substance . . . including a drug trafficking crime (as defined in section 924(c) of title 18)." § 101(a)(43)(B), as added by § 7342, 102 Stat. 4469, and as amended by § 222(a), 108 Stat. 4320, 8 U. S. C. § 1101(a)(43)(B). The general phrase "illicit trafficking" is left undefined, but § 924(c)(2) of Title 18 identifies the subcategory by defining "drug trafficking crime" as "any felony punishable under the Controlled Substances Act" or under either of two other federal statutes having no bearing on this case. Following the listing, § 101(a)(43) of the INA provides in its penultimate sentence that "[t]he term [aggravated felony] applies to an offense described in this paragraph whether in violation of Federal or State law" or, in certain circumstances, "the law of a foreign country." 8 U. S. C. § 1101(a)(43).

An aggravated felony on a criminal record has worse collateral effects than a felony conviction simple. Under the immigration statutes, for example, the Attorney General's discretion to cancel the removal of a person otherwise deportable does not reach a convict of an aggravated felony. § 1229b(a)(3). Nor is an aggravated felon eligible for asylum.

Kelly A. Ayotte of New Hampshire, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Mark L. Shurtleff* of Utah, and *Robert F. McDonnell* of Virginia; and for the Washington Legal Foundation et al. by *Daniel J. Popeo* and *Richard A. Samp.*

§§ 1158(b)(2)(A)(ii), 1158(b)(2)(B)(i). And under the sentencing law, the Federal Guidelines attach special significance to the "aggravated felony" designation: a conviction of unlawfully entering or remaining in the United States receives an eight-level increase for a prior aggravated felony conviction, but only four levels for "any other felony." United States Sentencing Commission, Guidelines Manual §2L1.2 (Nov. 2005) (hereinafter USSG); *id.*, comment., n. 3 (adopting INA definition of aggravated felony).

B

Although petitioner Jose Antonio Lopez entered the United States illegally in 1986, in 1990 he became a legal permanent resident. In 1997, he was arrested on state charges in South Dakota, pleaded guilty to aiding and abetting another person's possession of cocaine, and was sentenced to five years' imprisonment. See S. D. Codified Laws §22–42–5 (1988); §22–6–1 (Supp. 1997); §22–3–3 (1988). He was released for good conduct after 15 months.

After his release, the Immigration and Naturalization Service (INS)[1] began removal proceedings against Lopez, on two grounds: that his state conviction was a controlled substance violation, see 8 U. S. C. §1227(a)(2)(B)(i), and was also for an aggravated felony, see §1227(a)(2)(A)(iii). Lopez conceded the controlled substance violation but contested the aggravated felony determination, which would disqualify him from discretionary cancellation of removal. See §1229b(a)(3). At first, the Immigration Judge agreed with Lopez that his state offense was not an aggravated felony because the conduct it proscribed was no felony under the Controlled Substances Act (CSA). But after the Board of Immigration Appeals (BIA) switched its position on the issue, the same judge ruled that Lopez's drug crime was an

[1]The INS's immigration-enforcement functions are now handled by the Bureau of Immigration and Customs Enforcement in the Department of Homeland Security. See *Clark* v. *Martinez*, 543 U. S. 371, 374, n. 1 (2005).

aggravated felony after all, owing to its being a felony under state law. See *Matter of Yanez-Garcia*, 23 I. & N. Dec. 390 (2002) (announcing that BIA decisions would conform to the applicable Circuit law); *United States* v. *Briones-Mata*, 116 F. 3d 308 (CA8 1997) *(per curiam)* (holding state felony possession offenses are aggravated felonies). That left Lopez ineligible for cancellation of removal, and the judge ordered him removed. The BIA affirmed, and the Court of Appeals affirmed the BIA, 417 F. 3d 934 (CA8 2005).[2]

We granted certiorari to resolve a conflict in the Circuits about the proper understanding of conduct treated as a felony by the State that convicted a defendant of committing it, but as a misdemeanor under the CSA.[3] 547 U. S. 1054 (2006). We now reverse.

II

The INA makes Lopez guilty of an aggravated felony if he has been convicted of "illicit trafficking in a controlled

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[2] Although the Government has deported Lopez, we agree with the parties that the case is not moot. Lopez can benefit from relief in this Court by pursuing his application for cancellation of removal, which the Immigration Judge refused to consider after determining that Lopez had committed an aggravated felony.

[3] Compare *United States* v. *Wilson*, 316 F. 3d 506 (CA4 2003) (state-law felony is an aggravated felony); *United States* v. *Simon*, 168 F. 3d 1271 (CA11 1999) (same); *United States* v. *Hinojosa-Lopez*, 130 F. 3d 691 (CA5 1997) (same); *United States* v. *Briones-Mata*, 116 F. 3d 308 (CA8 1997) *(per curiam)* (same); *United States* v. *Cabrera-Sosa*, 81 F. 3d 998 (CA10 1996) (same); *United States* v. *Restrepo-Aguilar*, 74 F. 3d 361 (CA1 1996) (same), with *Gonzales-Gomez* v. *Achim*, 441 F. 3d 532 (CA7 2006) (state-law felony is not an aggravated felony); *United States* v. *Palacios-Suarez*, 418 F. 3d 692 (CA6 2005) (same); *Gerbier* v. *Holmes*, 280 F. 3d 297 (CA3 2002) (same). Two Circuits have construed the aggravated felony definition one way in the sentencing context and another in the immigration context. Compare *United States* v. *Ibarra-Galindo*, 206 F. 3d 1337 (CA9 2000) (in sentencing case, state-law felony is an aggravated felony); *United States* v. *Pornes-Garcia*, 171 F. 3d 142 (CA2 1999) (same), with *Cazarez-Gutierrez* v. *Ashcroft*, 382 F. 3d 905 (CA9 2004) (in immigration case, state-law felony is not an aggravated felony); *Aguirre* v. *INS*, 79 F. 3d 315 (CA2 1996) (same).

substance . . . including," but not limited to, "a drug trafficking crime (as defined in section 924(c) of title 18)." 8 U. S. C. § 1101(a)(43)(B). Lopez's state conviction was for helping someone else possess cocaine in South Dakota, which state law treated as the equivalent of possessing the drug, S. D. Codified Laws § 22–3–3, a state felony, § 22–42–5. Mere possession is not, however, a felony under the federal CSA, see 21 U. S. C. § 844(a), although possessing more than what one person would have for himself will support conviction for the federal felony of possession with intent to distribute, see § 841 (2000 ed. and Supp. III); *United States* v. *Kates*, 174 F. 3d 580, 582 (CA5 1999) *(per curiam)* ("Intent to distribute may be inferred from the possession of a quantity of drugs too large to be used by the defendant alone").

Despite this federal misdemeanor treatment, the Government argues that possession's felonious character as a state crime can turn it into an aggravated felony under the INA. There, it says, illicit trafficking includes a drug trafficking crime as defined in federal Title 18. Title 18 defines "drug trafficking crime" as "any felony punishable under the Controlled Substances Act (21 U. S. C. 801 et seq.)," § 924(c)(2), and the CSA punishes possession, albeit as a misdemeanor, see 21 U. S. C. § 844(a). That is enough, says the Government, because § 924(c)(2) requires only that the offense be punishable, not that it be punishable as a federal felony. Hence, a prior conviction in state court will satisfy the felony element because the State treats possession that way.

There are a few things wrong with this argument, the first being its incoherence with any commonsense conception of "illicit trafficking," the term ultimately being defined. The everyday understanding of "trafficking" should count for a lot here, for the statutes in play do not define the term, and so remit us to regular usage to see what Congress probably meant. *FDIC* v. *Meyer*, 510 U. S. 471, 476 (1994). And ordinarily "trafficking" means some sort of commercial dealing. See Black's Law Dictionary 1534 (8th ed. 2004) (defin-

ing to "traffic" as to "trade or deal in (goods, esp. illicit drugs or other contraband)"); see also *Urena-Ramirez* v. *Ashcroft*, 341 F. 3d 51, 57 (CA1 2003) (similar definition); *State* v. *Ezell*, 321 S. C. 421, 425, 468 S. E. 2d 679, 681 (App. 1996) (same). Commerce, however, was no part of Lopez's South Dakota offense of helping someone else to possess, and certainly it is no element of simple possession, with which the State equates that crime. Nor is the anomaly of the Government's reading limited to South Dakota cases: while federal law typically treats trafficking offenses as felonies and nontrafficking offenses as misdemeanors, several States deviate significantly from this pattern.[4]

Reading § 924(c) the Government's way, then, would often turn simple possession into trafficking, just what the English language tells us not to expect, and that result makes us very wary of the Government's position. Cf. *Leocal* v. *Ashcroft*, 543 U. S. 1, 11 (2004) ("[W]e cannot forget that we ultimately are determining the meaning of the term 'crime of violence' "). Which is not to deny that the Government might still be right; Humpty Dumpty used a word to mean "'just what [he chose] it to mean—neither more nor less,' "[5] and legislatures, too, are free to be unorthodox. Congress can define an aggravated felony of illicit trafficking in an unexpected way. But Congress would need to tell us so, and

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[4] Several States punish possession as a felony. See, *e. g.*, S. D. Codified Laws §§ 22–42–5 (2004), 22–6–1 (2005 Supp.); Tex. Health & Safety Code Ann. § 481.115 (West 2003); Tex. Penal Code Ann. §§ 12.32–12.35 (West 2003); see also n. 10, *infra*. In contrast, with a few exceptions, the CSA punishes drug possession offenses as misdemeanors (that is, by one year's imprisonment or less, cf. 18 U. S. C. § 3559(a)), see 21 U. S. C. § 844(a) (providing for "a term of imprisonment of not more than 1 year" for possession offenses except for repeat offenders, persons who possess more than five grams of cocaine base, and persons who possess flunitrazepam), and trafficking offenses as felonies, see § 841 (2000 ed. and Supp. III).

[5] L. Carroll, Alice in Wonderland and Through the Looking Glass 198 (Messner 1982).

there are good reasons to think it was doing no such thing here.[6]

First, an offense that necessarily counts as "illicit trafficking" under the INA is a "drug trafficking crime" under §924(c), that is, a "felony punishable under the [CSA]," §924(c)(2). And if we want to know what felonies might qualify, the place to go is to the definitions of crimes punishable as felonies under the CSA; where else would one naturally look? Although the Government would have us look to state law, we suspect that if Congress had meant us to do that it would have found a much less misleading way to make its point. Indeed, other parts of §924 expressly refer to guilt under state law, see §§924(g)(3), (k)(2), and the implication confirms that the reference solely to a "felony punishable under the [CSA]" in §924(c)(2) is to a crime punishable as a felony under the federal Act. See *Russello* v. *United States*, 464 U. S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion" (alteration in original; internal quotation marks omitted)). Unless a state offense is punishable as a federal felony it does not count.

The Government stresses that the text does not read "punishable as a felony," and that by saying simply "punishable"

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[6] Of course, we must acknowledge that Congress did counterintuitively define some possession offenses as "illicit trafficking." Those state possession crimes that correspond to felony violations of one of the three statutes enumerated in §924(c)(2), such as possession of cocaine base and recidivist possession, see 21 U. S. C. §844(a), clearly fall within the definitions used by Congress in 8 U. S. C. §1101(a)(43)(B) and 18 U. S. C. §924(c)(2), regardless of whether these federal possession felonies or their state counterparts constitute "illicit trafficking in a controlled substance" or "drug trafficking" as those terms are used in ordinary speech. But this coerced inclusion of a few possession offenses in the definition of "illicit trafficking" does not call for reading the statute to cover others for which there is no clear statutory command to override ordinary meaning.

Congress left the door open to counting state felonies, so long as they would be punishable at all under the CSA. But we do not normally speak or write the Government's way. We do not use a phrase like "felony punishable under the [CSA]" when we mean to signal or allow a break between the noun "felony" and the contiguous modifier "punishable under the [CSA]," let alone a break that would let us read the phrase as if it said "felony punishable under the CSA whether or not as a felony." Regular usage points in the other direction, and when we read "felony punishable under the . . . Act," we instinctively understand "felony punishable as such under the Act" or "felony as defined by the Act."[7] Without some further explanation, using the phrase to cover even a misdemeanor punishable under the Act would be so much trickery, violating "the cardinal rule that statutory language must be read in context." *General Dynamics Land Systems, Inc.* v. *Cline*, 540 U. S. 581, 596 (2004) (internal quotation marks and brackets omitted). That is why our interpretive regime reads whole sections of a statute together to fix on the meaning of any one of them, and the last thing this approach would do is divorce a noun from the modifier next to it without some extraordinary reason.

The Government thinks it has a good enough reason for doing just that, in the INA provision already mentioned, that the term "aggravated felony" "applies to an offense described in this paragraph whether in violation of Federal or State law." 8 U. S. C. § 1101(a)(43). But before this provision is given the Government's expansive treatment, it

[7] With respect to this last possibility, for purposes of § 924(c)(2) the crimes the CSA defines as "felonies" are those crimes to which it assigns a punishment exceeding one year's imprisonment. As the Government wisely concedes, see Brief for Respondent 25, although for its own purposes the CSA defines the term "felony" standing alone as "any Federal or State offense classified by applicable Federal or State law as a felony," 21 U. S. C. § 802(13), that definition does not apply here: § 924(c)(2) refers to a felony "punishable under the [CSA]," not to conduct punishable under some other law but defined as a felony by the CSA.

makes sense to ask whether it would have some use short of wrenching the expectations raised by normal English usage, and in fact it has two perfectly straightforward jobs to do: it provides that a generic description of "an offense . . . in this paragraph," one not specifically couched as a state offense or a federal one, covers either one, and it confirms that a state offense whose elements include the elements of a felony punishable under the CSA is an aggravated felony. Thus, if Lopez's state crime actually fell within the general term "illicit trafficking," the state felony conviction would count as an "aggravated felony," regardless of the existence of a federal felony counterpart; and a state offense of possessing more than five grams of cocaine base is an aggravated felony because it is a felony under the CSA, 21 U. S. C. § 844(a).[8]

The Government's reliance on the penultimate sentence of 8 U. S. C. § 1101(a)(43) is misplaced for a second reason. The Government tries to justify its unusual reading of a defined term in the criminal code on the basis of a single sentence in the INA. But nothing in the penultimate sentence of § 1101(a)(43) suggests that Congress changed the meaning of "felony punishable under the [CSA]" when it took that phrase from Title 18 and incorporated it into Title 8's definition of "aggravated felony." Yet the Government admits it has never begun a prosecution under 18 U. S. C. § 924(c)(1)(A) where the underlying "drug trafficking crime" was a state felony but a federal misdemeanor. See Tr. of Oral Arg. 33–36. This is telling: the failure of even a single eager Assist-

[8] Although the parties agree that Congress added the provision that both state and federal offenses qualify as aggravated felonies to codify the BIA's decision in *Matter of Barrett*, 20 I. & N. Dec. 171 (1990), see also H. R. Rep. No. 101–681, pt. 1, p. 147 (1990) (noting that the provision reflects congressional approval of *Barrett*), our enquiry requires looking beyond Congress's evident acceptance of *Barrett*. In *Barrett*, the BIA held only that the phrase "'drug trafficking crime'" includes state "crimes analogous to offenses under the [CSA]," 20 I. & N. Dec., at 177, 178, without specifying whether a state crime must be "analogous" to a CSA felony, as opposed to a CSA misdemeanor, to count.

ant United States Attorney to act on the Government's interpretation of "felony punishable under the [CSA]" in the very context in which that phrase appears in the United States Code belies the Government's claim that its interpretation is the more natural one.[9]

Finally, the Government's reading would render the law of alien removal, see 8 U. S. C. § 1229b(a)(3), and the law of sentencing for illegal entry into the country, see USSG § 2L1.2, dependent on varying state criminal classifications even when Congress has apparently pegged the immigration statutes to the classifications Congress itself chose. It may not be all that remarkable that federal consequences of state crimes will vary according to state severity classification when Congress describes an aggravated felony in generic terms, without express reference to the definition of a crime in a federal statute (as in the case of "illicit trafficking in a controlled substance"). But it would have been passing strange for Congress to intend any such result when a state criminal classification is at odds with a federal provision that the INA expressly provides as a specific example of an "aggravated felony" (like the § 924(c)(2) definition of "drug trafficking crime"). We cannot imagine that Congress took the trouble to incorporate its own statutory scheme of felonies and misdemeanors if it meant courts to ignore it whenever a State chose to punish a given act more heavily.

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[9] Contrary to the Government's response at oral argument, such a prosecution should be possible under the Government's proffered interpretation because this subset of "drug trafficking crime[s]" still "may be prosecuted in a court of the United States," 18 U. S. C. § 924(c)(1)(A), albeit at the misdemeanor level. For the same reason, the dissent's argument that our reading renders superfluous the requirement in § 924(c)(1)(A) that the crime "may be prosecuted in a court of the United States" misses the mark. *Post*, at 62 (opinion of THOMAS, J.). That phrase would be no less superfluous under the dissent's preferred reading, which would still require that the offense be "capable of punishment under the [CSA]," *post*, at 61, and therefore subject to prosecution in federal court.

Two examples show the untoward consequences of the Government's approach. Consider simple possession of marijuana. Not only is it a misdemeanor under the CSA, see 21 U. S. C. §844(a), but the INA expressly excludes "a single offense involving possession for one's own use of 30 grams or less" from the controlled substance violations that are grounds for deportation, 8 U. S. C. §1227(a)(2)(B)(i). Yet by the Government's lights, if a State makes it a felony to possess a gram of marijuana the congressional judgment is supplanted, and a state convict is subject to mandatory deportation because the alien is ineligible for cancellation of removal. See §1229b(a)(3).[10] There is no hint in the statute's text that Congress was courting any such state-by-state disparity.

The situation in reverse flouts probability just as much. Possessing more than five grams of cocaine base is a felony under federal law. See 21 U. S. C. §844(a). If a State drew the misdemeanor-felony line at six grams plus, a person convicted in state court of possessing six grams would not be guilty of an aggravated felony on the Government's reading, which makes the law of the convicting jurisdiction dispositive. See Brief for Respondent 48. Again, it is just not plausible that Congress meant to authorize a State to overrule its judgment about the consequences of federal offenses to which its immigration law expressly refers.

True, the argument is not all one-sided. The Government points out that some States graduate offenses of drug possession from misdemeanor to felony depending on quantity,

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[10] Indeed, several States treat possession of less than 30 grams of marijuana as a felony. See Fla. Stat. §§893.13(6)(a)–(b), 775.082(3)(d) (2006) (punishing possession of over 20 grams of marijuana as a felony); Nev. Rev. Stat. §§453.336(1)–(2) (2004), §§453.336(4), 193.130 (2003) (punishing possession of more than one ounce, or 28.3 grams, of marijuana as a felony); N. D. Cent. Code Ann. §§19–03.1–23(6) (Lexis Supp. 2005), 12.1–32–01(4) (Lexis 1997) (same); Ore. Rev. Stat. §161.605(2) (2003), Act Relating to Controlled Substances, §33, 2005 Ore. Laws p. 2006 (same).

whereas Congress generally treats possession alone as a misdemeanor whatever the amount (but leaves it open to charge the felony of possession with intent to distribute when the amount is large). Thus, an alien convicted by a State of possessing large quantities of drugs would escape the aggravated felony designation simply for want of a federal felony defined as possessing a substantial amount. This is so, but we do not weigh it as heavily as the anomalies just mentioned on the other side. After all, Congress knows that any resort to state law will implicate some disuniformity in state misdemeanor-felony classifications, but that is no reason to think Congress meant to allow the States to supplant its own classifications when it specifically constructed its immigration law to turn on them.

In sum, we hold that a state offense constitutes a "felony punishable under the Controlled Substances Act" only if it proscribes conduct punishable as a felony under that federal law. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, dissenting.

Jose Antonio Lopez pleaded guilty to aiding and abetting the possession of cocaine, a felony under South Dakota law. The Court holds that Lopez's conviction does not constitute an "aggravated felony" because federal law would classify Lopez's possession offense as a misdemeanor. I respectfully dissent.

I

The Immigration and Nationality Act (INA) provides that "[a]ny alien who is convicted of an aggravated felony at any time after admission is deportable." 8 U. S. C. § 1227(a)(2)(A)(iii). As relevant to this case, the INA defines an "aggravated felony" as "illicit trafficking in a controlled substance . . . including a drug trafficking crime (as defined in

section 924(c) of title 18)." § 1101(a)(43)(B). And "the term 'drug trafficking crime' means any felony punishable under the Controlled Substances Act . . . ." 18 U. S. C. § 924(c)(2).

Lopez's state felony offense qualifies as a "drug trafficking crime" as defined in § 924(c)(2). A plain reading of this definition identifies two elements: First, the offense must be a felony; second, the offense must be capable of punishment under the Controlled Substances Act (CSA). No one disputes that South Dakota punishes Lopez's crime as a felony. See S. D. Codified Laws § 22–42–5 (1988). Likewise, no one disputes that the offense was capable of punishment under the CSA. See 21 U. S. C. § 844(a). Lopez's possession offense therefore satisfies both elements, and the inquiry should end there.

The Court, however, takes the inquiry further by reasoning that only *federal* felonies qualify as drug trafficking crimes. According to the Court, the definition of drug trafficking crime contains an implied limitation: "any felony punishable [as a felony] under the" CSA. The text does not support this interpretation. Most obviously, the language "as a felony" appears nowhere in § 924(c)(2). Without doubt, Congress could have written the definition with this limitation, but it did not.

Furthermore, Lopez's suggested addition conflicts with the clear meaning of § 924(c)(2), which extends to both state and federal felonies. Specifically, the definition broadly encompasses "*any* felony" capable of being punished under the CSA. 18 U. S. C. § 924(c)(2) (emphasis added). "Read naturally, the word 'any' has an expansive meaning . . . ." *United States* v. *Gonzales*, 520 U. S. 1, 5 (1997); see also *Small* v. *United States*, 544 U. S. 385, 397 (2005) (THOMAS, J., dissenting) ("The broad phrase 'any court' unambiguously includes all judicial bodies with jurisdiction to impose the requisite conviction . . . " (footnote omitted)). The term "felony" takes its meaning from Title 18, which classifies crimes as felonies when punishable by death or greater than one year of impris-

onment. §3559(a). "[A]ny felony" therefore includes both federal and state felonies: The classification depends only on the authorized term of imprisonment. Accordingly, by the plain terms of §924(c)(2), conduct prohibited by the CSA may qualify as a "drug trafficking crime" if under either federal law or state law the conduct is punishable by more than one year of imprisonment.

This interpretation finds support in other provisions in which Congress placed limits on the types of drug trafficking crimes eligible for consideration. In particular, §924(c)(1)(A) proscribes the use or possession of a firearm "during and in relation to any . . . drug trafficking crime . . . *for which the person may be prosecuted in a court of the United States* . . . ." (Emphasis added.) See also 18 U. S. C. §924(c)(5) (2000 ed., Supp. V) (using identical language in proscribing the use or possession of "armor piercing ammunition"). The Court has previously interpreted this language to limit "any . . . drug trafficking crime" to federal crimes. *Gonzales*, *supra*, at 5. This language, therefore, acts as a jurisdictional limitation, carving out the subset of *federal* drug trafficking crimes and making only those eligible for use in §§924(c)(1)(A) and 924(c)(5). No similar federal-crime limitation appears in §924(c)(2). Interpreting the term "drug trafficking crime," as defined in §924(c)(2), to reach only federal felonies would render superfluous the federal-crime limitations in these other provisions. See *Duncan* v. *Walker*, 533 U. S. 167, 174 (2001) (counseling against interpretations that result in surplus language).[1]

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[1] The majority mistakenly contends that my interpretation also renders this language superfluous. *Ante*, at 58, n. 9. As I have stated, the plain meaning of "drug trafficking crime" includes two categories of felonies—state and federal. For the limiting language in §924(c)(1)(A) to have meaning, it must exclude one of those categories. As a state felony, Lopez's possession offense does not fall within the category of federal drug trafficking crimes. Consequently, it is not eligible for use under §924(c)(1)(A).

This interpretation also finds support in the INA, which lists "illicit trafficking" and its subset of "drug trafficking crime[s]" as aggravated felonies. 8 U. S. C. § 1101(a)(43)(B). The INA considers these offenses aggravated felonies "whether in violation of Federal or State law . . . ." § 1101(a)(43) (penultimate sentence). Thus, by incorporating § 924(c)(2)'s definition of "drug trafficking crime," the INA supports and confirms the conclusion that the definition of "drug trafficking crime" applies to both federal and state felonies.

Moreover, the INA isolates the relevant inquiry to the prosecuting jurisdiction. Section 1227(a)(2)(A)(iii) of Title 8 makes an alien eligible for deportation only upon a *conviction* for an "aggravated felony." The conviction requirement suggests that the jurisdiction issuing the conviction determines whether the offense is a felony. This result makes sense. When faced with an actual conviction, it would be unusual to ask, hypothetically, whether that conviction would have been a felony in a different jurisdiction. Furthermore, that hypothetical inquiry could cause significant inconsistencies. For instance, where a State convicts an alien of a misdemeanor drug crime, but federal law classifies the crime as a felony, the misdemeanor conviction would constitute an aggravated felony. This anomaly does not arise when relying on the prosecuting jurisdiction's classification of the crime.

II

The Court's approach is unpersuasive. At the outset of its analysis, the Court avers that it must look to the ordinary meaning of "illicit trafficking" because "the statutes in play do not define the term." *Ante*, at 53. That statement is incorrect. Section 1101(a)(43)(B) of Title 8 clearly defines "illicit trafficking in a controlled substance," at least in part, as "a drug trafficking crime *(as defined in section 924(c) of title 18)*." (Emphasis added.) Therefore, whatever else "illicit trafficking" might mean, it must include anything de-

fined as a "drug trafficking crime" in §924(c)(2). Rather than grappling with this definition of the relevant term, the Court instead sets up a conflicting straw man definition.

The majority states that the ordinary meaning of "illicit trafficking" involves "some sort of commercial dealing." *Ante*, at 53. Because mere possession does not constitute commercial dealing, the Court concludes that Lopez's possession offense cannot qualify as an "illicit trafficking" offense—or, by implication, a "drug trafficking crime." Yet even the Court admits that the term "drug trafficking crime" includes federal drug felonies, several of which are mere possession offenses. See 21 U. S. C. §844(a) (possession of more than five grams of cocaine base, possession of flunitrazepam, and repeat possession offenses). If the Court recognizes, in light of §924(c)(2), some mere possession offenses under the umbrella of "illicit trafficking," it cannot reject Lopez's conviction out of hand. Yet the Court downplays these "few exceptions" in two footnotes, concluding that "this coerced inclusion of a few possession offenses" gives no reason to "override [the] ordinary meaning" of "illicit trafficking." *Ante*, at 54, 55, nn. 4 and 6.

The inconsistency deserves more than the Court's passing reference. By encompassing repeat possession offenses, the term "illicit trafficking" includes far more than "a few" offenses outside of its ordinary meaning. It must include *every* type of possession offense under the CSA, so long as the offender has had a previous possession offense. If defining "illicit trafficking" to include the entire range of unlawful possession does not provide a "clear statutory command to override ordinary meaning," *ante*, at 55, n. 6, I do not know what would.[2]

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[2] In its discussion of whether possession may constitute "trafficking," the Court takes its own trip "through the looking glass." See *ante*, at 54. "Commerce," according to the Court, "certainly . . . is no element of simple possession . . . ." *Ibid.* Not long ago, the Court found the opposite to

The Court, however, gives only fleeting consideration to the text of § 924(c)(2) itself. After referencing the phrase "felony punishable under" the CSA, the Court asks "where else would one naturally look" other than the CSA to determine whether a felony qualifies as a drug trafficking crime. *Ante*, at 55. In response to the Court's rhetorical question, I suggest that one might naturally look to the conviction itself to determine whether it is a felony. When presented with an actual conviction, one would not expect to look to a hypothetical prosecution to determine whether an offender has committed a felony.

Continuing to avoid the text of § 924(c)(2), the Court instead focuses on what the statute does not say. It concludes that Congress could have expressly referenced state law as in §§ 924(g)(3) and (k)(2). *Ibid.* The response, of course, is that Congress could just as well have defined a "drug trafficking crime" as "any felony punishable *as a felony* under the CSA." Rejoining, the Court resorts to an "instinctiv[e] understand[ing]" that the statutory definition actually means "'felony as defined by the Act.'" *Ante*, at 56. Instinct notwithstanding, we must interpret what Congress actually wrote, not what it could have written.

Furthermore, the Court's "instinct" to interpret § 924(c)(2) to mean "felony as defined by" the CSA creates an unnecessary ambiguity in the meaning of "felony." The CSA defines "felony" as "any Federal or State offense classified by ap-

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be true when interpreting the scope of Congress' power under the Commerce Clause. See *Gonzales* v. *Raich*, 545 U. S. 1, 22 (2005) (concluding that Congress may regulate the mere possession of marijuana as affecting "commerce"). In *Raich*, the Court fell into the very trap it purports to identify today by "turn[ing] simple possession into [commerce], just what the English language tells us not to expect." *Ante*, at 54; see also *Raich*, *supra*, at 57–58 (THOMAS, J., dissenting). The Court's broadening of the Commerce Clause stands in tension with its present narrow interpretation of "trafficking," which 8 U. S. C. § 1101(a)(43)(B) explicitly alters to include at least some possession offenses.

plicable Federal or State law as a felony." 21 U. S. C. § 802(13).[3] Under the Court's interpretation, that definition seemingly should apply. The Court concludes otherwise but never resolves the ambiguity it creates: It instead explains that "felony" is defined by the CSA as something other than the CSA's definition of "felony." *Ante*, at 56, n. 7. That explanation is, at best, unsatisfying.

After gliding past the statutory text, the Court expresses concern over the fact that the Government's interpretation allows federal immigration law to turn on varying state criminal classifications. Congress apparently did not share this concern because some definitions of "aggravated felony" explicitly turn on the State's authorized term of imprisonment, not a uniform federal classification. See 8 U. S. C. §§ 1101(a)(43)(F), (G), (J), (P)–(T). Even the Court finds this variance "not . . . all that remarkable." *Ante*, at 58. The Court's real concern therefore has little to do with variations in state law. Rather, it worries that "a state criminal classification [may be] at odds with a federal provision." *Ibid.* But, obviously, if a state offense does not qualify under the definitions in § 1101(a)(43), then the offense cannot be an "aggravated felony." As shown in Part I, *supra*, though, nothing about Lopez's offense conflicts with the plain language of § 924(c)(2) as incorporated into § 1101(a)(43)(B). He was convicted of a "felony," and his offense was "punishable under the" CSA.

The Court also notes apparent anomalies in the Government's approach. It asserts that, under the Government's

[3] Several Courts of Appeals looked to this definition of "felony" when construing the meaning of "drug trafficking crime." See, *e. g.*, *United States* v. *Wilson*, 316 F. 3d 506, 512 (CA4 2003). Although the Government would clearly prevail under 21 U. S. C. § 802(13), it has conceded that this definition does not apply. This concession makes good sense: The definition of "drug trafficking crime" resides in Title 18, and it is therefore most natural to construe "felony" as used in that title. See n. 1, *supra*. As discussed above, that definition as well requires that a crime be considered a felony if the State defines it as a felony.

interpretation, a state felony conviction for simple possession of less than 30 grams of marijuana could be an "aggravated felony" even though the INA expressly excludes such an offense as grounds for deportation under 8 U. S. C. § 1227(a)(2)(B)(i). *Ante*, at 59. The Court's concern has little basis in reality. Only one State authorizes more than one year of imprisonment for possession of over 20 grams. See Fla. Stat. §§ 893.13(6)(a)–(b), 775.082(3)(d) (2006). A few others classify possession of one ounce (or 28.3 grams) as a felony. See, *e. g.*, Nev. Rev. Stat. §§ 453.336(1)–(2) (2004), §§ 453.336(4), 193.130 (2003). The mere possibility that a case could fall into this small gap and lead to removal provides no ground for the Court to depart from the plain meaning of 18 U. S. C. § 924(c)(2).

In fact, it is the Court's interpretation that will have a significant effect on removal proceedings involving state possession offenses. Federal law treats possession of large quantities of controlled substances as felonious possession with intent to distribute. States frequently treat the same conduct as simple possession offenses, which would escape classification as aggravated felonies under the Court's interpretation. Thus, the Court's interpretation will result in a large disparity between the treatment of federal and state convictions for possession of large amounts of drugs. And it is difficult to see why Congress would "authorize a State to overrule its judgment" about possession of large quantities of drugs any more than it would about other possession offenses. *Ante*, at 59.

Finally, the Court admits that its reading will subject an alien defendant convicted of a state misdemeanor to deportation if his conduct was punishable as a felony under the CSA. Accordingly, even if never convicted of an actual felony, an alien defendant becomes eligible for deportation based on a hypothetical federal prosecution. It is at least anomalous, if not inconsistent, that an actual misdemeanor may be considered an "aggravated felony."

III

Because a plain reading of the statute would avoid the ambiguities and anomalies created by today's majority opinion, I respectfully dissent.

Per Curiam

TOLEDO-FLORES *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 05–7664. Argued October 3, 2006—Decided December 5, 2006

Certiorari dismissed. Reported below: 149 Fed. Appx. 241.

Timothy Crooks argued the cause for petitioner. With him on the briefs were *Marjorie A. Meyers*, *H. Michael Sokolow*, and *Brent E. Newton*.

Deputy Solicitor General Kneedler argued the cause for the United States. With him on the brief were *Solicitor General Clement*, *Assistant Attorneys General Keisler* and *Fisher*, *Deputy Solicitor General Dreeben*, *Patricia M. Millett*, and *Donald E. Keener*.*

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

It is so ordered.

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*Briefs of *amici curiae* urging reversal were filed for the American Bar Association by *Michael S. Greco* and *David W. DeBruin*; for the Asian American Justice Center et al. by *Jayashri Srikantiah*; for Human Rights First by *Linda T. Coberly* and *Gene C. Schaerr*; for the National Association of Federal Defenders et al. by *Henry J. Bemporad* and *Frances H. Pratt*; and for the NYSDA Immigrant Defense Project et al. by *Christopher J. Meade*, *Steven R. Shapiro*, *Lucas Guttentag*, *Marianne C. Yang*, and *Manuel D. Vargas*.

A brief of *amici curiae* urging affirmance was filed for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *R. Ted Cruz*, Solicitor General, *Kent C. Sullivan*, First Assistant Attorney General, *Don Clemmer*, Deputy Attorney General, and *Amy Warr*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Mike Beebe* of Arkansas, *John W. Suthers* of Colorado, *Carl C. Danberg* of Delaware, *Lawrence Wasden* of Idaho, *Phill Kline* of Kansas, *Kelly A. Ayotte* of New Hampshire, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Mark L. Shurtleff* of Utah, and *Robert F. McDonnell* of Virginia.

Syllabus

CAREY, WARDEN *v.* MUSLADIN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 05–785. Argued October 11, 2006—Decided December 11, 2006

At respondent Musladin's murder trial, members of the victim's family sat in the front row of the spectators' gallery wearing buttons displaying the victim's image. The trial court denied Musladin's motion to order the family members not to wear the buttons. The California Court of Appeal upheld Musladin's conviction, stating that he had to show actual or inherent prejudice to succeed on the buttons claim; citing *Holbrook* v. *Flynn*, 475 U. S. 560, as providing the test for inherent prejudice; and ruling that he had not satisfied that test. The Federal District Court denied Musladin's habeas petition, but the Ninth Circuit reversed and remanded, finding that the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law," 28 U. S. C. §2254(d)(1), as determined by this Court in *Estelle* v. *Williams*, 425 U. S. 501, and *Flynn*, *supra*.

Held: The Ninth Circuit improperly concluded that the California Court of Appeal's decision was contrary to or an unreasonable application of clearly established federal law as determined by this Court. Pp. 74–77.

(a) Because "clearly established Federal law" in §2254(d)(1) "refers to the holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision," *Williams* v. *Taylor*, 529 U. S. 362, 412, federal habeas relief may be granted here if the California Court of Appeal's decision was contrary to or involved an unreasonable application of this Court's applicable holdings. P. 74.

(b) This Court addressed the effect of courtroom practices on defendants' fair-trial rights in *Williams*, in which the State compelled the defendant to stand trial in prison clothes, and *Flynn*, in which the State seated uniformed state troopers in the row of spectators' seats immediately behind the defendant at trial. In both cases, which dealt with government-sponsored practices, the Court noted that some practices are so inherently prejudicial that they must be justified by an "essential state" policy or interest. *E. g.*, *Williams*, *supra*, at 505. P. 75.

(c) In contrast to state-sponsored courtroom practices, the effect on a defendant's fair-trial rights of the spectator conduct to which Musladin objects is an open question in this Court's jurisprudence. The Court has never addressed a claim that such private-actor courtroom conduct was so inherently prejudicial that it deprived a defendant of a fair trial

Syllabus

or applied the test for inherent prejudice in *Williams* and *Flynn* to spectators' conduct. Indeed, part of that test—asking whether the practices furthered an essential *state* interest—suggests that those cases apply only to state-sponsored practices. Reflecting the lack of guidance from this Court, lower courts have diverged widely in their treatment of defendants' spectator-conduct claims. Given the lack of applicable holdings from this Court, it cannot be said that the state court "unreasonably appli[ed] . . . clearly established Federal law." Pp. 76–77.

427 F. 3d 653, vacated and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, GINSBURG, BREYER, and ALITO, JJ., joined. STEVENS, J., *post*, p. 78, KENNEDY, J., *post*, p. 80, and SOUTER, J., *post*, p. 81, filed opinions concurring in the judgment.

Gregory A. Ott, Deputy Attorney General of California, argued the cause for petitioner. With him on the briefs were *Bill Lockyer*, Attorney General, *Mary Jo Graves*, Chief Assistant Attorney General, *Robert R. Anderson*, former Chief Assistant Attorney General, *Gerald A. Engler*, Senior Assistant Attorney General, *Donald E. de Nicola*, Deputy Solicitor General, and *Peggy S. Ruffra*, Supervising Deputy Attorney General.

David W. Fermino, by appointment of the Court, *post*, p. 806, argued the cause and filed a brief for respondent.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *Gary Feinerman*, Solicitor General, *Michael Scodro*, Deputy Solicitor General, and *Karl R. Triebel*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Terry Goddard* of Arizona, *Mike Beebe* of Arkansas, *John W. Suthers* of Colorado, *Carl C. Danberg* of Delaware, *Charles J. Crist, Jr.*, of Florida, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Steve Carter* of Indiana, *Tom Miller* of Iowa, *Jim Hood* of Mississippi, *Mike McGrath* of Montana, *Patricia A. Madrid* of New Mexico, *Jim Petro* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Paul Summers* of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Robert F. McDonnell* of Virginia, *Rob McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, and *Peg Lautenschlager* of Wisconsin; for the Criminal Justice Legal Foundation

JUSTICE THOMAS delivered the opinion of the Court.

This Court has recognized that certain courtroom practices are so inherently prejudicial that they deprive the defendant of a fair trial. *Estelle* v. *Williams*, 425 U. S. 501, 503–506 (1976); *Holbrook* v. *Flynn*, 475 U. S. 560, 568 (1986). In this case, a state court held that buttons displaying the victim's image worn by the victim's family during respondent's trial did not deny respondent his right to a fair trial. We must decide whether that holding was contrary to or an unreasonable application of clearly established federal law, as determined by this Court. 28 U. S. C. § 2254(d)(1). We hold that it was not.

I

On May 13, 1994, respondent Mathew Musladin shot and killed Tom Studer outside the home of Musladin's estranged wife, Pamela. At trial, Musladin admitted that he killed Studer but argued that he did so in self-defense. A California jury rejected Musladin's self-defense argument and convicted him of first-degree murder and three related offenses.

During Musladin's trial, several members of Studer's family sat in the front row of the spectators' gallery. On at least some of the trial's 14 days, some members of Studer's family wore buttons with a photo of Studer on them.[1] Prior to opening statements, Musladin's counsel moved the court to order the Studer family not to wear the buttons during the trial. The court denied the motion, stating that it saw "no

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by *Kent S. Scheidegger*; for the National Crime Victim Law Institute et al. by *Douglas E. Beloof*; and for the New Jersey Crime Victims' Law Center by *Richard D. Pompelio*.

Jonathan D. Hacker and *Pamela Harris* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging affirmance.

[1] The record contains little concrete information about the buttons. The buttons were apparently two to four inches in diameter and displayed only a photograph of Studer. It is not clear how many family members wore the buttons or how many days of the trial they wore them.

possible prejudice to the defendant." App. to Pet. for Cert. 74a.

Musladin appealed his conviction to the California Court of Appeal in 1997. He argued that the buttons deprived him of his Fourteenth Amendment and Sixth Amendment rights. At the outset of its analysis, the Court of Appeal stated that Musladin had to show actual or inherent prejudice to succeed on his claim and cited *Flynn*, *supra*, at 570, as providing the test for inherent prejudice. The Court of Appeal, quoting part of *Flynn*'s test, made clear that it "consider[ed] the wearing of photographs of victims in a courtroom to be an 'impermissible factor coming into play,' the practice of which should be discouraged." App. to Pet. for Cert. 75a (quoting *Flynn*, *supra*, at 570). Nevertheless, the court concluded, again quoting *Flynn*, *supra*, at 571, that the buttons had not "branded defendant 'with an unmistakable mark of guilt' in the eyes of the jurors" because "[t]he simple photograph of Tom Studer was unlikely to have been taken as a sign of anything other than the normal grief occasioned by the loss of [a] family member." App. to Pet. for Cert. 75a.

At the conclusion of the state appellate process, Musladin filed an application for writ of habeas corpus in Federal District Court pursuant to § 2254. In his application, Musladin argued that the buttons were inherently prejudicial and that the California Court of Appeal erred by holding that the Studers' wearing of the buttons did not deprive him of a fair trial. The District Court denied habeas relief but granted a certificate of appealability on the buttons issue.

The Court of Appeals for the Ninth Circuit reversed and remanded for issuance of the writ, finding that under § 2254 the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." § 2254(d)(1). According to the Court of Appeals, this Court's decisions in *Williams* and *Flynn* clearly established a rule of federal law applicable to Musladin's case. *Musladin* v.

Lamarque, 427 F. 3d 653, 656–658 (2005). Specifically, the Court of Appeals cited its own precedent in support of its conclusion that *Williams* and *Flynn* clearly established the test for inherent prejudice applicable to spectators' courtroom conduct. 427 F. 3d, at 657–658 (citing *Norris* v. *Risley*, 918 F. 2d 828 (CA9 1990)). The Court of Appeals held that the state court's application of a test for inherent prejudice that differed from the one stated in *Williams* and *Flynn* "was contrary to clearly established federal law and constituted an unreasonable application of that law." 427 F. 3d, at 659–660. The Court of Appeals denied rehearing en banc. 427 F. 3d 647 (2005). We granted certiorari, 547 U. S. 1069 (2006), and now vacate.

II

Under the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1219:

> "(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254.

In *Williams* v. *Taylor*, 529 U. S. 362 (2000), we explained that "clearly established Federal law" in § 2254(d)(1) "refers to the holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision." *Id.*, at 412. Therefore, federal habeas relief may be granted here if the California Court of Appeal's decision was contrary to or involved an unreasonable application of this Court's applicable holdings.

A

In *Estelle* v. *Williams* and *Flynn*, this Court addressed the effect of courtroom practices on defendants' fair-trial rights. In *Williams*, the Court considered "whether an accused who is compelled to wear identifiable prison clothing at his trial by a jury is denied due process or equal protection of the laws." 425 U. S., at 502. The Court stated that "the State cannot, consistently with the Fourteenth Amendment, compel an accused to stand trial before a jury while dressed in identifiable prison clothes," *id.*, at 512, but held that the defendant in that case had waived any objection to being tried in prison clothes by failing to object at trial, *id.*, at 512–513.

In *Flynn*, the Court addressed whether seating "four uniformed state troopers" in the row of spectators' seats immediately behind the defendant at trial denied the defendant his right to a fair trial. 475 U. S., at 562. The Court held that the presence of the troopers was not so inherently prejudicial that it denied the defendant a fair trial. *Id.*, at 571. In reaching that holding, the Court stated that "the question must be . . . whether 'an unacceptable risk is presented of impermissible factors coming into play.'" *Id.*, at 570 (quoting *Williams*, *supra*, at 505).

Both *Williams* and *Flynn* dealt with government-sponsored practices: In *Williams*, the State compelled the defendant to stand trial in prison clothes, and in *Flynn*, the State seated the troopers immediately behind the defendant. Moreover, in both cases, this Court noted that some practices are so inherently prejudicial that they must be justified by an "essential state" policy or interest. *Williams*, *supra*, at 505 (concluding that the practice "further[ed] no essential state policy"); *Flynn*, *supra*, at 568–569 (holding that the practice was not of the sort that had to be justified by an "essential state interest").

B

In contrast to state-sponsored courtroom practices, the effect on a defendant's fair-trial rights of the spectator conduct to which Musladin objects is an open question in our jurisprudence. This Court has never addressed a claim that such private-actor courtroom conduct was so inherently prejudicial that it deprived a defendant of a fair trial.[2] And although the Court articulated the test for inherent prejudice that applies to state conduct in *Williams* and *Flynn*, we have never applied that test to spectators' conduct. Indeed, part of the legal test of *Williams* and *Flynn*—asking whether the practices furthered an essential *state* interest—suggests that those cases apply only to state-sponsored practices.

Reflecting the lack of guidance from this Court, lower courts have diverged widely in their treatment of defendants' spectator-conduct claims. Some courts have applied *Williams* and *Flynn* to spectators' conduct. *Norris* v. *Risley*, *supra*, at 830–831 (applying *Williams* and *Flynn* to hold spectators' buttons worn during a trial deprived the defendant of a fair trial); *In re Woods*, 154 Wash. 2d 400, 416–418, 114 P. 3d 607, 616–617 (2005) (applying *Flynn* but concluding that ribbons worn by spectators did not prejudice the defendant). Other courts have declined to extend *Williams* and *Flynn* to spectators' conduct. *Billings* v. *Polk*, 441 F. 3d 238, 246–247 (CA4 2006) ("These precedents do not

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[2] This Court has considered cases in which the proceedings were a sham or were mob dominated. See *Moore* v. *Dempsey*, 261 U. S. 86, 91 (1923) (describing allegations that "the whole proceeding [was] a mask—that counsel, jury and judge were swept to the fatal end by an irresistible wave of public passion, and that the State Courts failed to correct the wrong"); *Frank* v. *Mangum*, 237 U. S. 309, 324–325 (1915) ("[T]he disorder in and about the court-room during the trial and up to and at the reception of the verdict amounted to mob domination, that not only the jury but the presiding judge succumbed to it").

clearly establish that a defendant's right to a fair jury trial is violated whenever an article of clothing worn at trial arguably conveys a message about the matter before the jury"); *Davis* v. *State*, 223 S. W. 3d 466, 474–475 (Tex. App. 2006) ("Appellant does not cite any authority holding the display of this type of item by spectators creates inherent prejudice"). Other courts have distinguished *Flynn* on the facts. *Pachl* v. *Zenon*, 145 Ore. App. 350, 360, n. 1, 929 P. 2d 1088, 1093–1094, n. 1 (1996) (in banc). And still other courts have ruled on spectator-conduct claims without relying on, discussing, or distinguishing *Williams* or *Flynn*. *Buckner* v. *State*, 714 So. 2d 384, 388–389 (Fla. 1998) *(per curiam)*; *State* v. *Speed*, 265 Kan. 26, 47–48, 961 P. 2d 13, 29–30 (1998); *Nguyen* v. *State*, 977 S. W. 2d 450, 457 (Tex. App. 1998); *Kenyon* v. *State*, 58 Ark. App. 24, 33–35, 946 S. W. 2d 705, 710–711 (1997); *State* v. *Nelson*, 96–0883, pp. 9–10 (La. App. 12/17/97), 705 So. 2d 758, 763.

Given the lack of holdings from this Court regarding the potentially prejudicial effect of spectators' courtroom conduct of the kind involved here, it cannot be said that the state court "unreasonabl[y] appli[ed] clearly established Federal law." §2254(d)(1). No holding of this Court required the California Court of Appeal to apply the test of *Williams* and *Flynn* to the spectators' conduct here. Therefore, the state court's decision was not contrary to or an unreasonable application of clearly established federal law.

III

The Court of Appeals improperly concluded that the California Court of Appeal's decision was contrary to or an unreasonable application of clearly established federal law as determined by this Court. For these reasons, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, concurring in the judgment.

In *Williams* v. *Taylor*, 529 U. S. 362 (2000), this Court issued two opinions announcing two separate holdings. In Part II–B of Justice O'Connor's opinion, the Court held that an incorrect application of federal law was not necessarily an "'unreasonable application of . . . clearly established Federal law'" within the meaning of 28 U. S. C. §2254(d)(1). 529 U. S., at 409–413. In Parts III and IV of my opinion, in which Justice O'Connor joined, the Court held that the Virginia Supreme Court's rejection of the petitioner's claim that he had received ineffective assistance of counsel was both contrary to and an unreasonable application of law as determined by our earlier opinion in *Strickland* v. *Washington*, 466 U. S. 668 (1984). *Williams*, 529 U. S., at 390–398.

In *Strickland*, we held that the petitioner had not been denied the effective assistance of counsel and upheld his sentence of death. 466 U. S., at 700. While our ultimate *holding* rejected the petitioner's ineffective-assistance claim, the reasoning in our opinion (including carefully considered *dicta*) set forth the standards for evaluating such claims that have been accepted as "clearly established law" for over 20 years. See *Williams*, 529 U. S., at 391. Nevertheless, in a somewhat ironic dictum in her *Williams* opinion, Justice O'Connor stated that the statutory phrase "clearly established Federal law, as determined by the Supreme Court of the United States," refers to "the holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision." *Id.*, at 412. That dictum has been repeated in three subsequent opinions in which a bare majority of the Court rejected constitutional claims that four of us would have upheld.* Because I am persuaded that Justice

*See *Yarborough* v. *Alvarado*, 541 U. S. 652, 660–661 (2004); *Lockyer* v. *Andrade*, 538 U. S. 63, 71 (2003); *Tyler* v. *Cain*, 533 U. S. 656, 664 (2001).

O'Connor's dictum about dicta represents an incorrect interpretation of the statute's text, and because its repetition today is wholly unnecessary, I do not join the Court's opinion.

Virtually every one of the Court's opinions announcing a new application of a constitutional principle contains some explanatory language that is intended to provide guidance to lawyers and judges in future cases. See, *e. g.*, *Crawford* v. *Washington*, 541 U. S. 36 (2004); *Strickland*, 466 U. S. 668; *Miranda* v. *Arizona*, 384 U. S. 436 (1966); see also *Marbury* v. *Madison*, 1 Cranch 137 (1803). It is quite wrong to invite state-court judges to discount the importance of such guidance on the ground that it may not have been strictly necessary as an explanation of the Court's specific holding in the case. Cf. *County of Allegheny* v. *American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U. S. 573, 668 (1989) (KENNEDY, J., concurring in judgment in part and dissenting in part) ("As a general rule, the principle of *stare decisis* directs us to adhere not only to the holdings of our prior cases, but also their explications of the governing rules of law"); *Sheet Metal Workers* v. *EEOC*, 478 U. S. 421, 490 (1986) (O'Connor, J., concurring in part and dissenting in part) ("Although technically dicta, . . . an important part of the Court's rationale for the result that it reache[s] is entitled to greater weight . . . "). The text of the Antiterrorism and Effective Death Penalty Act of 1996 itself provides sufficient obstacles to obtaining habeas relief without placing a judicial thumb on the warden's side of the scales.

Ultimately, however, my reasons for joining the Court's judgment in this case are essentially the same as those expressed by JUSTICE SOUTER, with one caveat. In my opinion, there is no merit whatsoever to the suggestion that the First Amendment may provide some measure of protection to spectators in a courtroom who engage in actual or symbolic speech to express any point of view about an ongoing proceeding.

JUSTICE KENNEDY, concurring in the judgment.

Trials must be free from a coercive or intimidating atmosphere. This fundamental principle of due process is well established. It was recognized in *Frank* v. *Mangum*, 237 U. S. 309 (1915), though the Court credited the determination of the state court and granted no relief; and it was the square holding in *Moore* v. *Dempsey*, 261 U. S. 86 (1923), though the Court remanded for factfinding rather than for a new trial. The disruptive presence of the press required reversal in *Sheppard* v. *Maxwell*, 384 U. S. 333, 355 (1966), where "newsmen took over practically the entire courtroom, hounding most of the participants in the trial," and *Estes* v. *Texas*, 381 U. S. 532, 550 (1965), where the presence of cameras distracted jurors throughout the proceedings.

The rule against a coercive or intimidating atmosphere at trial exists because "we are committed to a government of laws and not of men," under which it is "of the utmost importance that the administration of justice be absolutely fair and orderly," and "[t]he constitutional safeguards relating to the integrity of the criminal process attend every stage of a criminal proceeding . . . culminating with a trial 'in a courtroom presided over by a judge.'" *Cox* v. *Louisiana*, 379 U. S. 559, 562 (1965) (quoting *Rideau* v. *Louisiana*, 373 U. S. 723, 727 (1963)) (finding a statute did not on its face violate First Amendment rights where it prohibited picketing in courthouses). Cf. *Wood* v. *Georgia*, 370 U. S. 375 (1962); *Turner* v. *Louisiana*, 379 U. S. 466 (1965).

The rule settled by these cases requires a court, on either direct or collateral review, to order a new trial when a defendant shows his conviction has been obtained in a trial tainted by an atmosphere of coercion or intimidation similar to that documented in the foregoing cases. This would seem to be true whether the pressures were from partisans, or, as seems to have been the case in *Sheppard*, from persons reacting to the drama of the moment who created an environment so raucous that calm deliberation by the judge or jury

was likely compromised in a serious way. If, in a given case, intimidation of this nature was brought about by the wearing of buttons, relief under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) would likely be available even in the absence of a Supreme Court case addressing the wearing of buttons. While general rules tend to accord courts "more leeway . . . in reaching outcomes in case-by-case determinations," *Yarborough* v. *Alvarado*, 541 U. S. 652, 664 (2004), AEDPA does not require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied, cf. *Wright* v. *West*, 505 U. S. 277, 308–309 (1992) (KENNEDY, J., concurring in judgment).

In the case before us there is no indication the atmosphere at respondent's trial was one of coercion or intimidation to the severe extent demonstrated in the cases just discussed. The instant case does present the issue whether as a preventative measure, or as a general rule to preserve the calm and dignity of a court, buttons proclaiming a message relevant to the case ought to be prohibited as a matter of course. That rule has not been clearly established by our cases to date. It may be that trial judges as a general practice already take careful measures to preserve the decorum of courtrooms, thereby accounting for the lack of guiding precedents on this subject.

In all events, it seems to me the case as presented to us here does call for a new rule, perhaps justified as much as a preventative measure as by the urgent needs of the situation. That rule should be explored in the court system, and then established in this Court before it can be grounds for relief in the procedural posture of this case.

For these reasons, I concur in the judgment of the Court.

JUSTICE SOUTER, concurring in the judgment.

In this habeas proceeding, a federal court may not set aside the state judgment sustaining Musladin's conviction without finding it contrary to, or an unreasonable application

of, clearly established federal law. 28 U. S. C. §2254(d)(1). While the ground between criteria entailed by "clearly established" and "unreasonable application" may be murky, it makes sense to regard the standard governing this case as clearly established by this Court. We have a number of decisions dealing with threats to the fundamental fairness of a criminal trial posed by conditions in (or originating in) the courtroom, see, *e. g.*, *Holbrook* v. *Flynn*, 475 U. S. 560 (1986); *Estelle* v. *Williams*, 425 U. S. 501 (1976); *Sheppard* v. *Maxwell*, 384 U. S. 333 (1966); *Estes* v. *Texas*, 381 U. S. 532 (1965), and the two most recent ones agree on a general formulation harking back to *Estes*, *id.*, at 542–546: the question is whether the practice or condition presents "'an unacceptable risk . . . of impermissible factors coming into play'" in the jury's consideration of the case. *Flynn*, *supra*, at 570 (quoting *Williams*, *supra*, at 505). The Court's intent to adopt a standard at this general and comprehensive level could not be much clearer.

As for the applicability of this standard, there is no serious question that it reaches the behavior of spectators. The focus of the later cases is on appearances within the courtroom open to the jurors' observation. There is no suggestion in the opinions, and no reason to think now, that it should matter whether the State or an individual may be to blame for some objectionable sight; either way, the trial judge has an affirmative obligation to control the courtroom and keep it free of improper influence. *Sheppard*, *supra*, at 363. And since the *Williams-Flynn* standard is a guide for trial judges, not for laypersons without schooling in threats to the fairness of trials, its general formulation is enough to tell trial judges that it applies to the behavior of courtroom visitors.

Nor is there any reasonable doubt about the pertinence of the standard to the practice in question; one could not seriously deny that allowing spectators at a criminal trial to wear visible buttons with the victim's photo can raise a risk of improper considerations. The display is no part of the

evidence going to guilt or innocence, and the buttons are at once an appeal for sympathy for the victim (and perhaps for those who wear the buttons) and a call for some response from those who see them. On the jurors' part, that expected response could well seem to be a verdict of guilty, and a sympathetic urge to assuage the grief or rage of survivors with a conviction would be the paradigm of improper consideration.

The only debatable question is whether the risk in a given case reaches the "unacceptable" level. While there is a fair argument that any level of risk from wearing buttons in a courtroom is unacceptable, two considerations keep me from concluding that the state court acted unreasonably in failing to see the issue this way and reverse the conviction. First, of the several courts that have considered the influence of spectators' buttons, the majority have left convictions standing. See, *e. g.*, *State* v. *Speed*, 265 Kan. 26, 47–48, 961 P. 2d 13, 29–30 (1998); *State* v. *Braxton*, 344 N. C. 702, 709–710, 477 S. E. 2d 172, 176–177 (1996); *State* v. *Lord*, 128 Wash. App. 216, 219–223, 114 P. 3d 1241, 1243–1245 (2005); *Nguyen* v. *State*, 977 S. W. 2d 450, 457 (Tex. App. 1998). I am wary of assuming that every trial and reviewing judge in those cases was unreasonable as well as mistaken in failing to embrace a no-risk standard, and so I would find it hard to say the state judges were unreasonable in this case, given the lack of detail about the buttons' display. Second, an interest in protected expression on the part of the spectators wearing mourners' buttons has been raised, but not given focus or careful attention in this or any other case that has come to our notice. Although I do not find such a First Amendment interest intuitively strong here, in the absence of developed argument it would be preferable not to decide whether protection of speech could require acceptance of some risk raised by spectators' buttons.

For these reasons, I think Musladin has not shown the state judge's application of our law to be unreasonable, and on that ground concur in the Court's judgment.

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BP AMERICA PRODUCTION CO., SUCCESSOR IN INTEREST TO AMOCO PRODUCTION CO., ET AL. *v.* BURTON, ACTING ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05–669. Argued October 4, 2006—Decided December 11, 2006

After the Interior Department's Minerals Management Service (MMS) issued administrative orders assessing petitioners for royalty underpayments on gas leases they held on Government lands, petitioners filed an administrative appeal, contending, *inter alia*, that the proceedings were barred by 28 U. S. C. §2415(a), which provides in relevant part: "[E]very *action for money damages* brought by the United States or an . . . agency thereof which is founded upon any contract . . . shall be barred unless *the complaint* is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings." (Emphasis added.) The Assistant Secretary of the Interior denied the appeals, ruling that §2415(a) did not govern the administrative order. The District Court agreed, and the Court of Appeals affirmed.

Held: Section 2415(a)'s 6-year statute of limitations applies only to court actions, not to the administrative payment orders involved in this case. Pp. 91–101.

(a) Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning. Read in this way, §2415(a)'s text is quite clear: Its key terms—"action" and "complaint"—are ordinarily used in connection with judicial, not administrative, proceedings. See, *e. g.*, *Unexcelled Chemical Corp.* v. *United States*, 345 U. S. 59, 66. The phrase "action for money damages" reinforces this reading because the term "damages" is generally used to mean pecuniary compensation or indemnity recovered in court. Moreover, the fact that §2415(a) distinguishes between judicial and administrative proceedings by providing that an "action" must commence "within one year after final decisions have been rendered in applicable administrative proceedings" shows that Congress knew how to identify administrative proceedings and manifestly had two separate concepts in mind when it enacted §2415(a). Pp. 91–92.

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(b) Petitioners' assertion that §2415(a)'s term "action" is commonly used to refer to administrative, as well as judicial, proceedings, is not persuasive. The numerous statutes and regulations cited to document this supposed usage actually undermine petitioners' argument, since none of them uses the term "action" standing alone to refer to administrative proceedings. Rather, each includes a modifier, referring to an "administrative action," a "civil or administrative action," or "administrative enforcement actions." Section 2415(a)'s references to "*every* action for money damages" founded upon "*any* contract" (emphasis added) do not assist petitioners, as they do not broaden the ordinary meaning of the key term "action." *Pennsylvania* v. *Delaware Valley Citizens' Council for Clean Air*, 478 U. S. 546, and *West* v. *Gibson*, 527 U. S. 212, distinguished. Pp. 92–94.

(c) Petitioners' suggestion that an MMS payment order constitutes a "complaint" under §2415(a) is also rejected. Their examples of statutes and regulations employing the term "complaint" in the administrative context are unavailing, since such occasional usage of the term does not alter its primary meaning, which concerns the initiation of a civil action. Moreover, an MMS payment order lacks the essential attributes of a complaint, which is a filing that commences a proceeding that may result in a legally binding order providing relief. In contrast, an MMS order in and of itself imposes a legal obligation on the party to which it is issued. Given that the failure to comply with such an order can result in fines of up to $10,000 a day, see 30 U. S. C. §1719(c), the order plays an entirely different role from that of a "complaint." P. 95.

(d) Any remaining doubts are erased by the canon that statutes of limitations are construed narrowly against the government. This canon is rooted in the traditional rule that time does not run against the King. A corollary of this rule is that a sovereign that elects to subject itself to a statute of limitations is given the benefit of the doubt if the statute's scope is ambiguous. *Bowers* v. *New York & Albany Lighterage Co.*, 273 U. S. 346, distinguished. Pp. 95–96.

(e) The Court disagrees with petitioners' argument that interpreting §2415(a) as applying only to judicial actions renders §2415(i)—which specifies that "[t]he provisions of this section shall not prevent the United States . . . from collecting any claim . . . by means of administrative offset"—superfluous in contravention of the canon against reading a statute in a way that makes part of it redundant. Under the Court's interpretation, §2415(i) is not mere surplusage, but clarifies that administrative offsets are not covered by §2415(a) even if they are viewed as an adjunct of a court action. To accept petitioners' argument, on the other hand, the Court would have to hold either that §2415(a) applied to administrative actions when it was enacted in 1966 or that it was

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extended to reach administrative actions when §2415(i) was added in 1982. The clear meaning of §2415(a)'s text, which has not been amended, refutes the first of these propositions, and accepting the latter would require the unrealistic conclusion that in 1982 Congress proceeded to enlarge §2415 to cover administrative proceedings by the oblique and cryptic route of inserting text expressly excluding a single administrative vehicle from the statute's reach. Pp. 96–99.

(f) Although interpreting §2415(a) as applying only to judicial actions may result in certain peculiarities, petitioners' alternative interpretation would itself result in disharmony. For instance, MMS oil and gas lease payment orders are now prospectively subject to a 7-year statute of limitations except with respect to obligations arising out of leases of Indian land. 30 U. S. C. §1724(b)(1). Given the exhortation that the Interior Secretary "aggressively carry out his trust responsibility in the administration of Indian oil and gas," §1701(a)(4), it seems unlikely that Congress intended to impose a shorter, 6-year statute of limitations for payment orders regarding Indian lands. Finally, while cogent, petitioners' policy arguments as to why limiting §2415(a) to judicial actions frustrates the statute's purposes must be viewed in perspective. For example, because there are always policy arguments against affording the sovereign special treatment, the relevant inquiry in a case like this is simply how far Congress meant to go when it enacted the statute of limitations in question. Prior to §2415(a)'s enactment, Government contract actions were not subject to any statute of limitations. See *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132. Absent congressional action changing this rule, it remains the law, and §2415(a) betrays no intent to change the rule as it applies to administrative proceedings. Pp. 99–101.

410 F. 3d 722, affirmed.

ALITO, J., delivered the opinion of the Court, in which all other Members joined, except ROBERTS, C. J., and BREYER, J., who took no part in the consideration or decision of the case.

Jeffrey A. Lamken argued the cause for petitioners. With him on the briefs was *Steven R. Hunsicker.*

Daryl Joseffer argued the cause for respondents. With him on the brief were *Solicitor General Clement, Assistant Attorney General Wooldridge, Deputy Solicitor General*

Kneedler, *William B. Lazarus*, *Martin J. Lalonde*, and *John A. Bryson*.*

JUSTICE ALITO delivered the opinion of the Court.

This case presents the question whether administrative payment orders issued by the Department of the Interior's Minerals Management Service (MMS) for the purpose of assessing royalty underpayments on oil and gas leases fall within 28 U. S. C. §2415(a), which sets out a 6-year statute of limitations for Government contract actions. We hold that this provision does not apply to these administrative payment orders, and we therefore affirm.

I

A

The Mineral Leasing Act of 1920 (MLA) authorizes the Secretary of the Interior to lease public-domain lands to private parties for the production of oil and gas. 41 Stat. 437, as amended, 30 U. S. C. §181 *et seq.* MLA lessees are obligated to pay a royalty of at least "12.5 percent in amount or value of the production removed or sold from the lease." §226(b)(1)(A).

In 1982, Congress enacted the Federal Oil and Gas Royalty Management Act (FOGRMA), 96 Stat. 2447, as amended, 30 U. S. C. §1701 *et seq.*, to address the concern that the "system of accounting with respect to royalties and other payments due and owing on oil and gas produced from such

*Briefs of *amici curiae* urging reversal were filed for the American Petroleum Institute by *Jonathan A. Hunter*, *Shannon S. Holtzman*, and *Harry M. Ng*; and for the Mountain States Legal Foundation by *William Perry Pendley*.

Jill Elise Grant, *Harry R. Sachse*, *Thomas H. Shipps*, *Patricia A. Madrid*, Attorney General of New Mexico, *Christopher D. Coppin*, *Martin Lobel*, and *Richard Chivaro* filed a brief for the Jicarilla Apache Nation et al. as *amici curiae* urging affirmance.

lease sites [was] archaic and inadequate." § 1701(a)(2). FOGRMA ordered the Secretary of the Interior to "audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil or gas and take appropriate actions to make additional collections or refunds as warranted." § 1711(c)(1). The Secretary, in turn, has assigned these duties to MMS. 30 CFR § 201.100 (2006).

Under FOGRMA, lessees are responsible in the first instance for the accurate calculation and payment of royalties. 30 U. S. C. § 1712(a). MMS, in turn, is authorized to audit those payments to determine whether a royalty has been overpaid or underpaid. §§ 1711(a) and (c); 30 CFR §§ 206.150(c), 206.170(d). In the event that an audit suggests an underpayment, it is MMS'[1] practice to send the lessee a letter inquiring about the perceived deficiency. If, after reviewing the lessee's response, MMS concludes that the lessee owes additional royalties, MMS issues an order requiring payment of the amount due. Failure to comply with such an order carries a stiff penalty: "Any person who—(1) knowingly or willfully fails to make any royalty payment by the date as specified by [an] order . . . shall be liable for a penalty of up to $10,000 per violation for each day such violation continues." 30 U. S. C. § 1719(c). The Attorney General may enforce these orders in federal court. § 1722(a).

An MMS payment order may be appealed, first to the Director of MMS and then to the Interior Board of Land Appeals or to an Assistant Secretary. 30 CFR §§ 290.105, 290.108. While filing an appeal does not generally stay the payment order, § 218.50(c), MMS will usually suspend the order's effect after the lessee complies with applicable bonding or financial solvency requirements, § 243.8.

Congress supplemented this scheme by enacting the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (FOGRSFA), 110 Stat. 1700, as amended, 30 U. S. C.

[1] MMS is not always the auditing body, as MMS may delegate its authority to the host State or an Indian tribe. 30 U. S. C. §§ 1732, 1735.

§ 1701 *et seq.* FOGRSFA adopted a prospective 7-year statute of limitations for any "judicial proceeding or demand" for royalties arising under a federal oil or gas lease. § 1724(b)(1). The parties agree that this provision applies both to judicial actions ("judicial proceeding[s]") and to MMS' administrative payment orders ("demand[s]") arising on or after September 1, 1996. *Ibid.* This provision does not, however, apply to judicial proceedings or demands arising from leases of Indian land or underpayments of royalties on pre-September 1, 1996, production. FOGRSFA §§ 9, 11, 110 Stat. 1717, notes following 30 U. S. C. § 1701.

There is no dispute that a lawsuit in court to recover royalties owed to the Government on pre-September 1, 1996, production is covered by 28 U. S. C. § 2415(a), which sets out a general 6-year statute of limitations for Government contract actions. That section, which was enacted in 1966, provides in relevant part:

> "Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every *action for money damages* brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless *the complaint* is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later." (Emphasis added.)

Whether this general 6-year statute of limitations also governs MMS administrative payment orders concerning pre-September 1, 1996, production is the question that we must decide in this case.

B

Petitioner BP America Production Co. holds gas leases from the Federal Government for lands in New Mexico's San Juan Basin. BP's predecessor, Amoco Production Co., first

entered into these leases nearly 50 years ago, and these leases require the payment of the minimum 12.5 percent royalty prescribed by 30 U. S. C. §226(b)(1)(A). For years, Amoco calculated the royalty as a percentage of the value of the gas as of the moment it was produced at the well. In 1996, MMS sent lessees a letter directing that royalties should be calculated based not on the value of the gas at the well, but on the value of the gas after it was treated to meet the quality requirements for introduction into the Nation's mainline pipelines.[2] Consistent with this guidance, MMS in 1997 ordered Amoco to pay additional royalties for the period from January 1989 through December 1996 in order to cover the difference between the value of the treated gas and its lesser value at the well.

Amoco appealed the order, disputing MMS' interpretation of its royalty obligations and arguing that the payment order was in any event barred in part by the 6-year statute of limitations in 28 U. S. C. §2415(a). The Assistant Secretary of the Interior denied the appeal and ruled that the statute of limitations was inapplicable.

Amoco, together with petitioner Atlantic Richfield Co., sought review in the United States District Court for the District of Columbia, which agreed with the Assistant Secretary that §2415(a) did not govern the administrative order. *Amoco Production Co.* v. *Baca*, 300 F. Supp. 2d 1, 21 (2003). The Court of Appeals for the District of Columbia Circuit affirmed, *Amoco Production Co.* v. *Watson*, 410 F. 3d 722, 733 (2005), and we granted certiorari, 547 U. S. 1068 (2006), in order to resolve the conflict between that decision and the contrary holding of the United States Court of Appeals for the Tenth Circuit in *OXY USA, Inc.* v. *Babbitt*, 268 F. 3d 1001, 1005 (2001) (en banc). We now affirm.

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[2] MMS intended this letter to implement its regulations, which required lessees "to place gas in marketable condition at no cost to the Federal Government unless otherwise provided in the lease agreement." 30 CFR §206.152(i) (1996).

II

A

We start, of course, with the statutory text. *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 173 (1994). Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning. *Perrin* v. *United States*, 444 U. S. 37, 42 (1979). Read in this way, the text of §2415(a) is quite clear.

The statute of limitations imposed by §2415(a) applies when the Government commences any "action for money damages" by filing a "complaint" to enforce a contract, and the statute runs from the point when "the right of action accrues." The key terms in this provision—"action" and "complaint"—are ordinarily used in connection with judicial, not administrative, proceedings. In 1966, when §2415(a) was enacted, a commonly used legal dictionary defined the term "right of action" as "[t]he right to bring suit; a legal right to maintain an action," with "suit" meaning "any proceeding . . . in a court of justice." Black's Law Dictionary 1488, 1603 (4th ed. 1951) (hereinafter Black's). Likewise, "complaint" was defined as "the first or initiatory pleading on the part of the plaintiff in a civil action."[3] *Id.*, at 356. See also *Unexcelled Chemical Corp.* v. *United States*, 345 U. S. 59, 66 (1953) (holding that filing a complaint, in the ordinary sense of the term, means filing a suit in court, not initiating an administrative proceeding: "Commencement of an action by the filing of a complaint has too familiar a history . . . for us to assume that Congress did not mean to use the words in their ordinary sense"). The phrase "action for

[3]These primary definitions have not changed in substance since 1966. Black's (8th ed. 2004) now defines "action" as "[a] civil or criminal judicial proceeding" and a "complaint" as "[t]he initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief." *Id.*, at 31, 303.

money damages" reinforces this reading because the term "damages" is generally used to mean "pecuniary compensation or indemnity, which may be recovered *in the courts*." Black's 466 (emphasis added).

Nothing in the language of §2415(a) suggests that Congress intended these terms to apply more broadly to administrative proceedings. On the contrary, §2415(a) distinguishes between judicial and administrative proceedings. Section 2415(a) provides that an "action" must commence "within one year after final decisions have been rendered in applicable administrative proceedings." Thus, Congress knew how to identify administrative proceedings and manifestly had two separate concepts in mind when it enacted §2415(a).[4]

B

In an effort to show that the term "action" is commonly used to refer to administrative, as well as judicial, proceedings, petitioners have cited numerous statutes and regulations that, petitioners claim, document this usage.[5] These

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[4] Moreover, it seems unlikely that Congress intended administrative proceedings to commence within one year after the conclusion of administrative proceedings.

[5] See, *e. g.*, 42 U. S. C. §5205(a)(1) (statute of limitations for "administrative action[s] to recover any payment[s] made to a State or local government for disaster or emergency assistance"); 12 U. S. C. §1441a(b)(11)(G) (requiring Resolution Trust Corporation to maintain staff to assist with certain "cases, civil claims, and administrative enforcement actions"); 15 U. S. C. §78u(h)(9)(B) (Securities Exchange Act of 1934 provision noting that certain "[f]inancial records . . . may be disclosed or used only in an administrative, civil, or criminal action"). See also 7 CFR §3018.400(c) (2006) (Department of Agriculture regulation regarding "administrative action[s] for the imposition of a civil penalty" for failure to file disclosure forms); 71 Fed. Reg. 7407 (2006) (to be codified in 12 CFR §1412.2(l)(1)) (Farm Credit System Insurance Corporation regulation defining "prohibited indemnification payment" to include reimbursement for a civil money penalty of judgment resulting from any "administrative or civil action" instituted by the Farm Credit Administration); 10 CFR pt. 820, App. A,

examples, however, actually undermine petitioners' argument, since none of them uses the term "action" standing alone to refer to administrative proceedings. Rather, each example includes a modifier of some sort, referring to an "administrative action," a "civil or administrative action," or "administrative enforcement actions." This pattern of usage buttresses the point that the term "action," standing alone, ordinarily refers to a judicial proceeding.

Petitioners contend that their broader interpretation of the statutory term "action" is supported by the reference to "*every* action for money damages" founded upon "*any* contract." 28 U. S. C. §2415(a) (emphasis added). But the broad terms "every" and "any" do not assist petitioners, as they do not broaden the ordinary meaning of the key term "action."

Petitioners argue that their interpretation is supported by *Pennsylvania* v. *Delaware Valley Citizens' Council for Clean Air*, 478 U. S. 546 (1986), and *West* v. *Gibson*, 527 U. S. 212 (1999), but this reliance is misplaced. In *Delaware Valley Citizens' Council*, we construed the attorney's fee provision of the Clean Water Act (CWA), which authorizes a "court, in issuing any final order in any action brought pursuant to subsection (a) of this section, [to] award costs of litigation . . . to any party." 42 U. S. C. §7604(d). We permitted the recovery of fees both for work done in court and in subsequent administrative proceedings. But the pertinent statutory provision in that case did not employ the key terms that appear in the statute at issue here. Specifically, the CWA provision referred to "litigation," not to an "action" commenced by the filing of a "complaint." Moreover, "the work done by counsel [in the administrative phase of the case] was

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IX–b (2006) ("Administrative actions, such as determination of award fees where [Department of Energy] contracts provide for such determinations, will be considered separately from any civil penalties that may be imposed under this Enforcement Policy").

as necessary to the attainment of adequate relief . . . as was all of their earlier work in the courtroom . . . obtaining the consent decree." 478 U. S., at 558. And we expressly reserved judgment on the question "whether an award of attorney's fees is appropriate . . . when there is no connected court action in which fees are recoverable." *Id.*, at 560, n. 5.

West helps petitioners even less. There, we considered whether the Equal Employment Opportunity Commission (EEOC) could order a federal agency to pay compensatory damages in an administrative proceeding. Section 717(b) of Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000e–16(b), authorized the EEOC to employ "appropriate remedies," but did not specifically authorize damages, and §717(c) authorized a subsequent court action against an employer agency, 42 U. S. C. §2000e–16(c). In 1991, Congress added Rev. Stat. §1977A(a)(1), 42 U. S. C. §1981a(a)(1), which provided that "[i]n an action brought by a complaining party under section 706 or 717 . . . the complaining party may recover compensatory . . . damages." In *West*, the respondent employee argued that the enactment of §1981a(a)(1) showed that Congress did not consider compensatory damages to be "appropriate remedies" in an EEOC proceeding, as opposed to an action brought by an aggrieved employee. If Congress had wished to authorize the award of compensatory damages in an EEOC proceeding, the respondent employee reasoned, Congress would have so provided in §1981a(a)(1), by expressly cross-referencing §717(c). We rejected this argument, but in doing so we did not hold that an EEOC proceeding is an "action" under §1981a(a)(1). Rather, we simply concluded that the EEOC's authorization under §717(b) to award "appropriate remedies" was broad enough to encompass compensatory damages. 527 U. S., at 220–221.

For these reasons, we are not persuaded by petitioners' argument that the term "action" in §2415(a) applies to the administrative proceedings that follow the issuance of an MMS payment order.

C

We similarly reject petitioners' suggestion that an MMS letter or payment order constitutes a "complaint" within the meaning of §2415(a). Petitioners point to examples of statutes and regulations that employ the term "complaint" in the administrative context. See, *e. g.*, 15 U. S. C. §45(b) (requiring the Federal Trade Commission to serve a "complaint" on a party suspected of engaging in an unfair method of competition); 29 CFR §102.15 (2006) (a "complaint" initiates unfair labor practice proceedings before the National Labor Relations Board). But the occasional use of the term to describe certain administrative filings does not alter its primary meaning, which concerns the initiation of "a civil action." Black's 356. Moreover, even if the distinction between administrative and judicial proceedings is put aside, an MMS payment order lacks the essential attributes of a complaint. While a complaint is a filing that commences a proceeding that may in the end result in a legally binding order providing relief, an MMS payment order in and of itself imposes a legal obligation on the party to which it is issued. As noted, the failure to comply with such an order can result in fines of up to $10,000 a day. An MMS payment order, therefore, plays an entirely different role from that of a "complaint."[6]

D

To the extent that any doubts remain regarding the meaning of §2415(a), they are erased by the rule that statutes of limitations are construed narrowly against the government. *E. I. DuPont de Nemours & Co.* v. *Davis*, 264 U. S. 456 (1924).

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[6]There was some question at oral argument whether MMS' initial letter might constitute a "complaint" within the meaning of §2415(a). Petitioners did not advance this argument, and recognized at oral argument that neither the statute nor the regulations require the issuance of such a letter. Tr. of Oral Arg. 7–9. The Government, for its part, observed that all such a letter does is request information, as the agency has not yet decided whether to assert a claim. *Id.*, at 28. This is not a complaint.

This canon is rooted in the traditional rule *quod nullum tempus occurrit regi*—time does not run against the King. *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132 (1938). A corollary of this rule is that when the sovereign elects to subject itself to a statute of limitations, the sovereign is given the benefit of the doubt if the scope of the statute is ambiguous.

Bowers v. *New York & Albany Lighterage Co.*, 273 U. S. 346 (1927), cited by petitioners, is not to the contrary. There, as here, the issue was the scope of a statute of limitations. The provision in that case, however, provided that "'[n]o suit or proceeding for the collection of any such taxes'" shall commence more than five years after the filing of the return. *Id.*, at 348–349. The Government argued that the terms "proceeding" and "suit" were coterminous, and urged further that any ambiguity should be resolved in its favor.

The Court recognized the canon, restating it much as we have above. *Id.*, at 349. But the Court concluded that the canon had no application in that case because the text of the relevant statute, unlike §2415(a), applied clearly and separately to "suits" and "proceedings," and the Court saw no reason to give these different terms the same meaning. *Id.*, at 349–350.

E

We come now to petitioners' argument that interpreting §2415(a) as applying only to judicial actions would render subsection (i) of the same statute superfluous. Subsection (i) provides as follows:

> "The provisions of this section shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31." 28 U. S. C. §2415(i).

An administrative offset is a mechanism by which the Government withholds payment of a debt that it owes another

party in order to recoup a payment that this party owes the Government. 31 U. S. C. §3701(a)(1). Thus, under subsection (i), the Government may recover a debt via an administrative offset even if the Government would be time barred under subsection (a) from pursuing the debt in court.

Petitioners argue that, if §2415(a) applies only to judicial proceedings and not to administrative proceedings, there is no need for §2415(i)'s rule protecting a particular administrative mechanism (*i. e.*, an administrative offset) from the statute of limitations set out in subsection (a). Invoking the canon against reading a statute in a way that makes part of the statute redundant, see, *e. g.*, *TRW Inc.* v. *Andrews*, 534 U. S. 19, 31 (2001), petitioners contend that subsection (i) shows that subsection (a) was meant to apply to administrative, as well as judicial, proceedings. We disagree.

As the Court of Appeals noted, subsection (i) was not enacted at the same time as subsection (a) but rather was added 16 years later by the Debt Collection Act of 1982. 96 Stat. 1749. This enactment followed a dispute between the Office of the Comptroller General of the United States, head of the agency then named the General Accounting Office (GAO), and the Department of Justice's Office of Legal Counsel (OLC) over whether an administrative offset could be used to recoup a debt where a judicial recoupment action was already time barred.

In 1978, in response to a question from the United States Civil Service Commission, OLC opined that an administrative offset could not be used to recoup a debt as to which a judicial action was already time barred. OLC reached this conclusion not because it believed that §2415(a) reached administrative proceedings generally,[7] but rather because of the particular purpose of an administrative offset. "Where

[7] Indeed, what emerges strikingly from OLC's 1978 opinion is that no one at the time—neither OLC nor GAO—even contemplated that §2415(a) applied to administrative procedures in the first instance. Nor have petitioners pointed to any source demonstrating otherwise.

[a] debt has not been reduced to judgment," OLC stated, "an administrative offset is merely a pre-judgment attachment device." Memorandum from John M. Harmon, Assistant Attorney General, OLC, to Alan K. Campbell, Chairman, U. S. Civil Service Commission Re: Effect of Statute of Limitations on Administrative Collection of United States Claims 3 (Sept. 29, 1978), Joint Lodging. OLC opined that a prejudgment attachment device such as this exists only to preserve funds to satisfy any judgment the creditor subsequently obtains. *Id.*, at 4 (citing cases). OLC therefore concluded that, where a lawsuit is already foreclosed by §2415(a), an administrative offset that is the functional equivalent of a pretrial attachment is also unavailable. *Id.*, at 3.

GAO disagreed. See *In re Collection of Debts—Statute of Limitations on Administrative Setoff*, 58 Comp. Gen. 501, 504–505 (1979). In its view, the question was answered by

> "[t]he general rule . . . that statutes of limitations applicable to suits for debts or money demands bar or run only against the remedy (the right to bring suit) to which they apply and do not discharge the debt or extinguish, or even impair, the right or obligation, either in law or in fact, and the creditor may avail himself of every other lawful means of realizing on the debt or obligation. See *Mascot Oil Co.* v. *United States*, 42 F. 2d 309 (Ct. Cl. 1930), affirmed 282 U. S. 434; and 33 Comp. Gen. 66 (1953). See also *Ready-Mix Concrete Co.* v. *United States*, 130 F. Supp. 390 (Ct. Cl. 1955)." *Ibid.*

That Congress had time barred the judicial remedy, GAO reasoned, imposed no limit on the administrative remedy.

The OLC–GAO dispute reveals that, even under the interpretation of subsection (a)—the one we are adopting—that considers it applicable only to court proceedings, subsection (i) is not mere surplusage. It clarifies that administrative offsets are not covered by subsection (a) even if they are viewed as an adjunct of a court action.

To accept petitioners' argument, on the other hand, we would have to hold either that § 2415(a) applied to administrative actions when it was enacted in 1966 or that it was extended to reach administrative actions when subsection (i) was added in 1982. The clear meaning of the text of § 2415(a), which has not been amended, refutes the first of these propositions, and accepting the latter would require us to conclude that in 1982 Congress elected to enlarge § 2415 to cover administrative proceedings by inserting text expressly excluding a single administrative vehicle from the statute's reach. It is entirely unrealistic to suggest that Congress would proceed by such an oblique and cryptic route.

III

Petitioners contend that interpreting § 2415(a) as applying only to judicial actions results in a statutory scheme with peculiarities that Congress could not have intended. For example, petitioners note that while they are required by statute to preserve their records regarding royalty obligations for only seven years, 30 U. S. C. § 1724(f), the interpretation of § 2415(a) adopted by the Court of Appeals permits MMS to issue payment orders that reach back much further.

We are mindful of the fact that a statute should be read where possible as effecting a "'symmetrical and coherent regulatory scheme,'" *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 133 (2000), but here petitioners' alternative interpretation of § 2415(a) would itself result in disharmony. For instance, under FOGRSFA, MMS payment orders regarding oil and gas leases are now prospectively subject to a 7-year statute of limitations except with respect to obligations arising out of leases of Indian land. Consequently, if we agreed with petitioners that § 2415(a) applies generally to administrative proceedings, payment orders relating to oil and gas royalties owed under leases of Indian land would be subject to a shorter (*i. e.*, 6-year) statute of limitations than similar payment orders relating to leases of

other public-domain lands (which would be governed by FOGRSFA's new 7-year statute). Particularly in light of Congress' exhortation that the Secretary of the Interior "aggressively carry out his trust responsibility in the administration of Indian oil and gas," 30 U. S. C. § 1701(a)(4), it seems unlikely that Congress intended to impose a shorter statute of limitations for payment orders regarding Indian lands.

Petitioners contend, finally, that interpreting § 2415(a) as applying only to judicial actions would frustrate the statute's purposes of providing repose, ensuring that actions are brought while evidence is fresh, lightening recordkeeping burdens, and pressuring federal agencies to assert federal rights promptly. These are certainly cogent policy arguments, but they must be viewed in perspective.

For one thing, petitioners overstate the scope of the problem, since Congress of course can enact and has enacted specific statutes of limitations to govern specific administrative actions. See, *e. g.*, 42 U. S. C. § 5205(a)(1) (statute of limitations for an administrative action to recover payments made to state governments for disaster or emergency assistance). Indeed, in 1996, FOGRSFA imposed just such a limitation prospectively on all non-Indian land, oil, and gas lease claims.

Second, and more fundamentally, the consequences of interpreting § 2415(a) as limited to court actions must be considered in light of the traditional rule exempting proceedings brought by the sovereign from any time bar. There are always policy arguments against affording the sovereign this special treatment, and therefore in a case like this, where the issue is how far Congress meant to go when it enacted a statute of limitations applicable to the Government, arguing that an expansive interpretation would serve the general purposes of statutes of limitations is somewhat beside the point. The relevant inquiry, instead, is simply how far Congress meant to go when it enacted the statute of limitations in question. Here prior to the enactment of § 2415(a) in 1966, contract actions brought by the Government were not

subject to any statute of limitations. See *Guaranty Trust Co.*, 304 U. S., at 132. Absent congressional action changing this rule, it remains the law, and the text of § 2415(a) betrays no intent to change this rule as it applies to administrative proceedings.

In the final analysis, while we appreciate petitioners' arguments, they are insufficient to overcome the plain meaning of the statutory text. We therefore hold that the 6-year statute of limitations in § 2415(a) applies only to court actions and not to the administrative proceedings involved in this case.

* * *

For these reasons, the judgment of the Court of Appeals for the District of Columbia Circuit is affirmed.

It is so ordered.

THE CHIEF JUSTICE and JUSTICE BREYER took no part in the consideration or decision of this case.

Syllabus

UNITED STATES *v.* RESENDIZ-PONCE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 05–998. Argued October 10, 2006—Decided January 9, 2007

Respondent, a Mexican citizen, was charged with violating 8 U. S. C. § 1326(a) by attempting to reenter the United States after having been deported. The District Court denied his motion to have the indictment dismissed because it did not allege a specific overt act that he committed in seeking reentry. In reversing, the Ninth Circuit reasoned that the indictment's omission of an overt act was a fatal flaw not subject to harmless-error review.

Held: Respondent's indictment was not defective, and, thus, this Court need not reach the harmless-error issue. While the Government does not dispute that respondent cannot be guilty of attempted reentry under § 1326(a) unless he committed an overt act qualifying as a substantial step toward completing his goal or that "[a]n indictment must set forth each element of the crime that it charges," *Almendarez-Torres* v. *United States*, 523 U. S. 224, 228, it contends that the instant indictment implicitly alleged that respondent engaged in the necessary overt act by alleging that he "attempted" to enter the country. This Court agrees. Not only does "attempt" as used in common parlance connote action rather than mere intent, but, more importantly, as used in the law for centuries, it encompasses both the overt act and intent elements. Thus, an indictment alleging attempted reentry under § 1326(a) need not specifically allege a particular overt act or any other "component par[t]" of the offense. See *Hamling* v. *United States*, 418 U. S. 87, 117. It was enough for the indictment to point to the relevant criminal statute and allege that respondent "intentionally attempted to enter the United States . . . at or near San Luis . . . Arizona" "[o]n or about June 1, 2003." App. 8. An indictment has two constitutional requirements: "[F]irst, [it must] contai[n] the elements of the offense charged and fairly infor[m] a defendant of the charge against which he must defend, and, second, [it must] enabl[e] him to plead an acquittal or conviction in bar of future prosecutions for the same offense." *Hamling*, 418 U. S., at 117. Here, the use of the word "attempt," coupled with the specification of the time and place of the alleged reentry, satisfied both. Respondent's argument that the indictment would have been sufficient only if it alleged any of three overt acts performed during his attempted reentry—that he walked into an inspection area; that he presented a misleading identifi-

cation card; or that he lied to the inspector—is rejected. Respondent is correct that some crimes must be charged with greater specificity than an indictment parroting a federal criminal statute's language, see *Russell* v. *United States*, 369 U. S. 749, but the *Russell* Court's reasoning suggests that there was no infirmity in the present indictment, see *id.*, at 764, 762, and respondent's indictment complied with Federal Rule of Criminal Procedure 7(c)(1), which provides that an indictment "must be a plain, concise, and definite written statement of the essential facts constituting the offense charged." Pp. 106–111.

425 F. 3d 729, reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, SOUTER, THOMAS, GINSBURG, BREYER, and ALITO, JJ., joined. SCALIA, J., filed a dissenting opinion, *post*, p. 111.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the briefs were *Solicitor General Clement*, *Assistant Attorney General Fisher*, *Kannon K. Shanmugam*, and *Nina Goodman*.

Atmore Baggot, by appointment of the Court, 547 U. S. 1161, argued the cause and filed a brief for respondent.*

JUSTICE STEVENS delivered the opinion of the Court.

A jury convicted respondent Juan Resendiz-Ponce, a Mexican citizen, of illegally attempting to reenter the United States. Because the indictment failed to allege a specific overt act that he committed in seeking reentry, the Court of Appeals set aside his conviction and remanded for dismissal of the indictment. We granted the Government's petition for certiorari to answer the question whether the omission of an element of a criminal offense from a federal indictment can constitute harmless error. 547 U. S. 1069 (2006).

Although the Government expressly declined to "seek review of the court of appeals' threshold holdings that the com-

*Briefs of *amici curiae* urging affirmance were filed for the National Association of Criminal Defense Lawyers by *Jeffrey T. Green* and *Pamela Harris;* for the National Association of Federal Defenders by *Steven F. Hubachek*, *Henry J. Bemporad*, and *Frances H. Pratt;* and for Paul Hardy by *Herbert V. Larson, Jr.*, and *Denise LeBoeuf*.

mission of an overt act was an element of the offense of attempted unlawful reentry and that the indictment failed to allege that element," Pet. for Cert. 9, n. 3, "'[i]t is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case,'" *Ashwander* v. *TVA*, 297 U. S. 288, 347 (1936) (Brandeis, J., concurring) (quoting *Burton* v. *United States*, 196 U. S. 283, 295 (1905)). For that reason, after oral argument we ordered the parties to file supplemental briefs directed to the question whether respondent's indictment was in fact defective. We conclude that it was not and therefore reverse without reaching the harmless-error issue.

I

Respondent was deported twice, once in 1988 and again in 2002, before his attempted reentry on June 1, 2003. On that day, respondent walked up to a port of entry and displayed a photo identification of his cousin to the border agent. Respondent told the agent that he was a legal resident and that he was traveling to Calexico, California. Because he did not resemble his cousin, respondent was questioned, taken into custody, and ultimately charged with a violation of 8 U. S. C. § 1326(a).[1] The indictment alleged:

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[1] Title 8 U. S. C. § 1326 provides, in part:

"Reentry of removed aliens

"(a) In general

"Subject to subsection (b) of this section, any alien who—

"(1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

"(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

"On or about June 1, 2003, JUAN RESENDIZ-PONCE, an alien, knowingly and intentionally attempted to enter the United States of America at or near San Luis in the District of Arizona, after having been previously denied admission, excluded, deported, and removed from the United States at or near Nogales, Arizona, on or about October 15, 2002, and not having obtained the express consent of the Secretary of the Department of Homeland Security to reapply for admission.

"In violation of Title 8, United States Code, Sections 1326(a) and enhanced by (b)(2)." App. 8.

Respondent moved to dismiss the indictment, contending that it "fail[ed] to allege an essential element, an overt act, or to state the essential facts of such overt act." *Id.*, at 12. The District Court denied the motion and, after the jury found him guilty, sentenced respondent to a 63-month term of imprisonment.

The Ninth Circuit reversed, reasoning that an indictment's omission of "an essential element of the offense is a fatal flaw not subject to mere harmless error analysis." 425 F. 3d 729, 732 (2005). In the court's view, respondent's indictment was fatally flawed because it nowhere alleged "any specific overt act that is a substantial step" toward the completion of the unlawful reentry.[2] *Id.*, at 733. The panel majority explained:

"shall be fined under title 18, or imprisoned not more than 2 years, or both."

[2] In the opinion of the Ninth Circuit, the five elements of the offense of attempted reentry in violation of § 1326(a) are:

"(1) [T]he defendant had the purpose, i. e., conscious desire, to reenter the United States without the express consent of the Attorney General; (2) the defendant committed an overt act that was a substantial step towards reentering without that consent; (3) the defendant was not a citizen of the United States; (4) the defendant had previously been lawfully denied admission, excluded, deported or removed from the United States; and

> "The defendant has a right to be apprised of what overt act the government will try to prove at trial, and he has a right to have a grand jury consider whether to charge that specific overt act. Physical crossing into a government inspection area is but one of a number of other acts that the government might have alleged as a substantial step toward entry into the United States. The indictment might have alleged the tendering a bogus identification card; it might have alleged successful clearance of the inspection area; or it might have alleged lying to an inspection officer with the purpose of being admitted. . . . A grand jury never passed on a specific overt act, and Resendiz was never given notice of what specific overt act would be proved at trial." *Ibid.*

Judge Reavley concurred, agreeing that Ninth Circuit precedent mandated reversal. If not bound by precedent, however, he would have found the indictment to be "constitutionally sufficient" because it clearly informed respondent "of the precise offense of which he [was] accused so that he [could] prepare his defense and so that a judgment thereon [would] safeguard him from a subsequent prosecution for the same offense." *Ibid.*

II

At common law, the attempt to commit a crime was itself a crime if the perpetrator not only intended to commit the completed offense, but also performed "'some open deed tending to the execution of his intent.'" 2 W. LaFave, Substantive Criminal Law § 11.2(a), p. 205 (2d ed. 2003) (quoting E. Coke, Third Institute 5 (6th ed. 1680)); see Keedy, Criminal Attempts at Common Law, 102 U. Pa. L. Rev. 464, 468 (1954) (noting that common-law attempt required "that some act must be done towards carrying out the intent"). More

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(5) the Attorney General had not consented to the defendant's attempted reentry." *United States* v. *Gracidas-Ulibarry*, 231 F. 3d 1188, 1196 (2000) (en banc).

recently, the requisite "open deed" has been described as an "overt act" that constitutes a "substantial step" toward completing the offense. 2 LaFave, Substantive Criminal Law § 11.4; see ALI, Model Penal Code § 5.01(1)(c) (1985) (defining "criminal attempt" to include "an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime"); see also *Braxton* v. *United States*, 500 U. S. 344, 349 (1991) ("For Braxton to be guilty of an attempted killing under 18 U. S. C. § 1114, he must have taken a substantial step towards that crime, and must also have had the requisite *mens rea*"). As was true at common law, the mere intent to violate a federal criminal statute is not punishable as an attempt unless it is also accompanied by significant conduct.

The Government does not disagree with respondent's submission that he cannot be guilty of attempted reentry in violation of 8 U. S. C. § 1326(a) unless he committed an overt act qualifying as a substantial step toward completion of his goal. See Supplemental Brief for United States 7–8. Nor does it dispute that "[a]n indictment must set forth each element of the crime that it charges." *Almendarez-Torres* v. *United States*, 523 U. S. 224, 228 (1998). It instead contends that the indictment at bar implicitly alleged that respondent engaged in the necessary overt act "simply by alleging that he 'attempted to enter the United States.'" Supplemental Brief for United States 8. We agree.

Not only does the word "attempt" as used in common parlance connote action rather than mere intent, but more importantly, as used in the law for centuries, it encompasses both the overt act and intent elements. Consequently, an indictment alleging attempted illegal reentry under § 1326(a) need not specifically allege a particular overt act or any other "component par[t]" of the offense. See *Hamling* v. *United States*, 418 U. S. 87, 119 (1974). Just as it was enough for the indictment in *Hamling* to allege that the defendant mailed "obscene" material in violation of 18 U. S. C.

§ 1461, see 418 U. S., at 117–118, it was enough for the indictment in this case to point to the relevant criminal statute and allege that "[o]n or about June 1, 2003," respondent "attempted to enter the United States of America at or near San Luis in the District of Arizona,"[3] App. 8.

In *Hamling*, we identified two constitutional requirements for an indictment: "first, [that it] contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, [that it] enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." 418 U. S., at 117. In this case, the use of the word "attempt," coupled with the specification of the time and place of respondent's attempted illegal reentry, satisfied both. Indeed, the time-and-place information provided respondent with more adequate notice than would an indictment describing particular overt acts. After all, a given defendant may have approached the border or lied to a border-patrol agent in the course of countless attempts on innumerable occasions. For the same reason, the time-and-date specification in respondent's indictment provided ample protection against the risk of multiple prosecutions for the same crime.[4]

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[3] See *United States* v. *Toma*, No. 94–CR–333, 1995 WL 65031, *1 (ND Ill., Feb. 13, 1995) ("[F]or indictment purposes, use of the word 'attempt' is sufficient to incorporate the substantial step element. The word 'attempt' necessarily means taking a substantial step" (footnote omitted)).

[4] There is little practical difference between our holding and JUSTICE SCALIA's position. Apparently, JUSTICE SCALIA would have found the indictment to be sufficient if it also stated that respondent "'took a substantial step'" toward entering the United States. See *post*, at 116 (dissenting opinion). Unlike the Ninth Circuit, then, JUSTICE SCALIA would not have required the indictment to allege a particular overt act such as tendering a false identification to a border inspector. Compare *ibid.* with 425 F. 3d 729, 733 (2005) (case below). With all due respect to his principled position, we think that the "substantial step" requirement is implicit in the word "attempt," and we do not believe that adding those four words would have given respondent any greater notice of the charges against him or protection against future prosecution.

Respondent nonetheless maintains that the indictment would have been sufficient only if it had alleged any of three overt acts performed during his attempted reentry: that he walked into an inspection area; that he presented a misleading identification card; or that he lied to the inspector. See Supplemental Brief for Respondent 7. Individually and cumulatively, those acts tend to prove the charged attempt—but none was essential to the finding of guilt in this case. All three acts were rather part of a single course of conduct culminating in the charged "attempt." As Justice Holmes explained in *Swift & Co.* v. *United States*, 196 U. S. 375, 396 (1905), "[t]he unity of the plan embraces all the parts."[5]

Respondent is of course correct that while an indictment parroting the language of a federal criminal statute is often sufficient, there are crimes that must be charged with greater specificity. See *Hamling*, 418 U. S., at 117. A clear example is the statute making it a crime for a witness summoned before a congressional committee to refuse to answer any question "pertinent to the question under inquiry." 2 U. S. C. § 192. As we explained at length in our opinion in *Russell* v. *United States*, 369 U. S. 749 (1962), a valid indictment for such a refusal to testify must go beyond the words of § 192 and allege the subject of the congressional hearing in order to determine whether the defendant's refusal was "pertinent." Based on a number of cases arising out of congressional investigations, we recognized that the relevant hearing's subject was frequently uncertain but invariably "central to every prosecution under the statute." *Id.*, at 764. Both to provide fair notice to defendants and to ensure that any conviction would arise out of the theory of guilt

[5] Likewise, it would it be unrealistic to suggest that respondent actually committed three separate attempt offenses involving three different overt acts. Indeed, if each overt act were treated as a separate element, an attempt involving multiple overt acts might conceivably qualify for several separate offenses, thus perversely enhancing, rather than avoiding, the risk of successive prosecution for the same wrong.

presented to the grand jury, we held that indictments under § 192 must do more than restate the language of the statute.

Our reasoning in *Russell* suggests that there was no infirmity in the present indictment. First, unlike the statute at issue in *Russell*, guilt under 8 U. S. C. § 1326(a) does not "depen[d] so crucially upon such a specific identification of fact." 369 U. S., at 764. Second, before explaining the special need for particularity in charges brought under 2 U. S. C. § 192, Justice Stewart noted that, in 1872, Congress had enacted a statute reflecting "the drift of the law away from the rules of technical and formalized pleading which had characterized an earlier era."[6] 369 U. S., at 762. Other than that statute, which was repealed in 1948, there was no other legislation dealing generally with the subject of indictments until the promulgation of Federal Rule of Criminal Procedure 7(c)(1). As we have said, the Federal Rules "were designed to eliminate technicalities in criminal pleadings and are to be construed to secure simplicity in procedure." *United States* v. *Debrow*, 346 U. S. 374, 376 (1953). While detailed allegations might well have been required under common-law pleading rules, see, *e. g.*, *Commonwealth* v. *Peaslee*, 177 Mass. 267, 59 N. E. 55 (1901), they surely are not contemplated by Rule 7(c)(1), which provides that an indictment "shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged."[7]

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[6] The 1872 statute provided that "no indictment found and presented by a grand jury in any district or circuit . . . shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant." § 8, 17 Stat. 198. The opinion in *Russell* noted that the 1872 statute had been repealed, but its substance had been preserved in Federal Rule of Criminal Procedure 52(a). See 369 U. S., at 762.

[7] Federal Rule of Criminal Procedure 31(c) is also instructive. It provides that a defendant may be found guilty of "an attempt to commit the offense charged; or . . . an attempt to commit an offense necessarily in-

Because we are satisfied that respondent's indictment fully complied with that Rule and did not deprive him of any significant protection that the constitutional guarantee of a grand jury was intended to confer, we reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, dissenting.

It is well established that an indictment must allege all the elements of the charged crime. *Almendarez-Torres* v. *United States*, 523 U. S. 224, 228 (1998); *United States* v. *Cook*, 17 Wall. 168, 174 (1872). As the Court acknowledges, it is likewise well established that "attempt" contains two substantive elements: the *intent* to commit the underlying crime, and the undertaking of *some action* toward commission of that crime. See *ante*, at 106 (citing 2 W. LaFave, Substantive Criminal Law §11.2(a), p. 205 (2d ed. 2003) (hereinafter LaFave), E. Coke, Third Institute 5 (6th ed. 1680), and Keedy, Criminal Attempts at Common Law, 102 U. Pa. L. Rev. 464, 468 (1954)). See also *Braxton* v. *United States*, 500 U. S. 344, 349 (1991). It should follow, then, that when the Government indicts for attempt to commit a crime, it must allege both that the defendant had the intent to commit the crime, *and* that he took some action toward its commission. Any rule to the contrary would be an exception to the standard practice.

The Court gives two reasons for its special "attempt" exception. First, it says that in "common parlance" the word attempt "connote[s]," and therefore "impli[es]," both the in-

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cluded in the offense charged, if the attempt is an offense in its own right." Fed. Rules Crim. Proc. 31(c)(2)–(3). If a defendant indicted only for a completed offense can be convicted of attempt under Rule 31(c) without the indictment ever mentioning an overt act, it would be illogical to dismiss an indictment charging "attempt" because it fails to allege such an act.

tent and overt-act elements. *Ante*, at 107. This strikes me as certainly irrelevant, and probably incorrect to boot. It is irrelevant because, as I have just discussed, we have always required the elements of a crime to be explicitly set forth in the indictment, *whether or not* they are fairly called to mind by the mere name of the crime. Burglary, for example, connotes in common parlance the entry of a building with felonious intent, yet we require those elements to be set forth. Our precedents make clear that the indictment must "fully, directly, and *expressly*, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished." *United States* v. *Carll*, 105 U. S. 611, 612 (1882) (emphasis added). And the Court's argument is probably incorrect because I doubt that the common meaning of the word "attempt" conveys with precision what conviction of that crime requires. A reasonable grand juror, relying on nothing but that term, might well believe that it connotes intent plus any minor action toward the commission of the crime, rather than the "'substantial step'" that the Court acknowledges is required, *ante*, at 107.

Besides appealing to "common parlance," the Court relies on the fact that attempt, "as used in the law for centuries . . . encompasses both the overt act and intent elements." *Ibid.* Once again, this argument seems to me certainly irrelevant and probably incorrect. Many common-law crimes have retained relatively static elements throughout history, burglary among them; that has never been thought to excuse the specification of those elements in the indictment. And the argument is probably incorrect, because the definition of attempt has not been nearly as consistent as the Court suggests. Nearly a century ago, a leading criminal-law treatise pointed out that "'attempt' is a term peculiarly indefinite" with "no prescribed legal meaning." 1 F. Wharton, Criminal Law § 229, p. 298 (11th ed. 1912). Even the modern treatise the Court relies upon, see *ante*, at 106–107, explains—in

a subsection entitled "The Confusion"—that jurisdictions vary widely in how they define the requisite *actus reus*. LaFave § 11.4(a), at 218–219. Among the variations are: "'an act toward the commission of' some offense"; "an act 'in furtherance of'" an offense; "'a substantial step toward the commission of the crime'"; "'some appreciable fragment of the crime'"; and the wonderfully opaque "'commencement of the consummation.'" *Ibid.* (footnote omitted). These are not simply different ways of saying "substantial step." The Model Penal Code definition that the Court invokes, *ante*, at 107, is just that: a model. It does not establish the degree of homogeneity that the Court asserts. The contention that the "federal system" has a "well-settled" definition of attempt, see Supplemental Brief for United States 22, tells us nothing; many terms in federal indictments have only one *federal* definition, not because that is the universally accepted definition, but because there is only one Federal Government.

In this case, the indictment alleged that respondent "knowingly and intentionally attempted to enter the United States of America," App. 8, so that the Court focuses only on whether the indictment needed to allege the second element of attempt, an overt act. If one accepts the Court's opinion, however, the indictment could just as well have omitted the phrase "knowingly and intentionally," since that is understood in "common parlance," and has been an element of attempt "for centuries." Would we say that, in a prosecution for first-degree murder, the element of "malice aforethought" could be omitted from the indictment simply because it is commonly understood, and the law has always required it? Surely not.

The sole judicial authority the Court cites for its novel exception to the traditional indictment requirements (other than an unpublished opinion of a District Court, see *ante*, at 108, n. 3) is *Hamling* v. *United States*, 418 U. S. 87 (1974). The relevant portion of that opinion consists of the following:

> "The definition of obscenity . . . is not a question of fact, but one of law; the word 'obscene,' . . . is not merely a generic or descriptive term, but a legal term of art. The legal definition of obscenity does not change with each indictment; it is a term sufficiently definite in legal meaning to give a defendant notice of the charge against him. Since the various component parts of the constitutional definition of obscenity need not be alleged in the indictment in order to establish its sufficiency, the indictment in this case was sufficient to adequately inform petitioners of the charges against them." *Id.*, at 118–119 (citations omitted).

If these sentences established the broad principle the Court asserts, they would apply not only to the elements of attempt, but to the elements of all crimes, effecting a revolution in our jurisprudence regarding the requirements of an indictment. In fact, however, *Hamling* is easily distinguishable. "Obscenity" is, to be sure, one of the elements of the crime of publishing obscenity. But the "various component parts of the constitutional definition of obscenity" are no more *elements* of the crime of publishing obscenity than the various component parts of the definition of "building" are elements of the crime of burglary. To be sure, those definitions must be met for conviction; but they need not be set forth in the indictment. If every word contained within the definition of each element of a crime were *itself* an element of the crime within the meaning of the indictment requirement, there would be no end to the prolixity of indictments. There is no dispute here that "intent" and "substantial step" are elements of the federal crime of attempt, just as obscenity was an element of the crime charged in *Hamling*. *Hamling* would be in point if it dispensed with the charging of obscenity in the indictment.

The Court finds another point "instructive": "If a defendant indicted only for a completed offense can be convicted of

attempt . . . without the indictment ever mentioning an overt act, it would be illogical to dismiss an indictment charging 'attempt' because it fails to allege such an act." *Ante*, at 110–111, n. 7. I disagree; it seems to me entirely logical. To indict for commission of a *completed offense*, the prosecutor must persuade the grand jury that the accused's acts and state of mind fulfilled all the elements of the offense. If they did so, and if the offense has a *mens rea* element (which almost all crimes, including burglary, do), then they unquestionably fulfilled all the elements of an attempt as well—*i. e.*, the accused meant to commit the crime and took the requisite step (no matter how demanding the requirement) in that direction. That is to say, attempt to commit a crime is simply a lesser included offense. A grand-jury finding that the accused committed the crime is *necessarily* a finding that he attempted to commit the crime, and therefore the attempt need not be separately charged. When, however, the prosecutor seeks only an indictment for attempt, it is not enough to tell the grand jury that it requires a finding of "some, but not all, of the elements of the substantive crime"; he must specify what the elements of attempt consist of. He must do that for the same reason a court must *instruct* the petit jury on the attempt elements, see 2 E. Devitt, C. Blackmar, & K. O'Malley, Federal Jury Practice and Instructions § 21.03, Notes, p. 4 (4th ed. 1990) (collecting cases), even when the indictment has not separately *charged* attempt: Without such specification, the jury, grand or petit, cannot intelligently find attempt.

Finally, the Court suggests that there is something different about attempt because it is a parasitic crime. There is no such crime as bald attempt; it must be attempt *to commit some other crime*. This is unquestionably true, fully as true as the fact that attempt begins with an "a." But there is no reason why the one, any more than the other, has anything to do with the purposes, and hence the substance, of the in-

dictment requirement. Conspiracy is also, in most cases, a parasitic crime, and no one contends that its elements need not be charged.

Despite the clear answer provided by straightforward application of the oft-recited principles of our jurisprudence, I might have been persuaded to recognize an (illogical) exception to those principles if the Government had demonstrated that mere recitation of the word "attempt" in attempt indictments has been the traditional practice. But its effort to do so falls far short; in fact, it has not even undertaken such an effort. The Government has pointed to some cases that allow an indictment simply to use the word "attempt," and many others that invalidate an indictment for failure to allege an overt act. See Supplemental Brief for United States 15–21. It matters not whether more of one sort or the other of these cases arose in state courts or federal courts; the point is that there is no established historical "attempt" exception to the general principles of our jurisprudence. That being so, those principles must prevail.

To be clear, I need not decide in this case whether, as the Ninth Circuit held, the Government was required to specify in the indictment which particular overt act it would be relying on at trial. Cf. *Russell* v. *United States*, 369 U. S. 749 (1962). It suffices to support the judgment, that the Government *was* required to state not only that Resendiz-Ponce "knowingly and intentionally attempted to enter the United States of America," but also that he "took a substantial step" toward that end.

* * *

My dissenting view that the indictment was faulty (a point on which we requested supplemental briefing) puts me in the odd position of being the sole Justice who must decide the question on which we granted certiorari: whether a constitutionally deficient indictment is structural error, as the Ninth Circuit held, or rather is amenable to harmless-error analysis. I cannot vote to affirm or to reverse the judgment with-

out resolving that issue. Since the full Court will undoubtedly have to speak to the point on another day (it dodged the bullet today by inviting and deciding a *different* constitutional issue—albeit, to be fair, a narrower one) there is little use in my setting forth my views in detail. It should come as no surprise, given my opinions in *United States* v. *Gonzalez-Lopez*, 548 U. S. 140 (2006), and *Neder* v. *United States*, 527 U. S. 1, 30 (1999) (opinion concurring in part and dissenting in part), that I would find the error to be structural. I would therefore affirm the judgment of the Ninth Circuit.

Syllabus

MEDIMMUNE, INC. *v.* GENENTECH, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 05–608. Argued October 4, 2006—Decided January 9, 2007

After the parties entered into a patent license agreement covering, *inter alia*, respondents' then-pending patent application, the application matured into the "Cabilly II" patent. Respondent Genentech, Inc., sent petitioner a letter stating that Synagis, a drug petitioner manufactured, was covered by the Cabilly II patent and that petitioner owed royalties under the agreement. Although petitioner believed no royalties were due because the patent was invalid and unenforceable and because Synagis did not infringe the patent's claims, petitioner considered the letter a clear threat to enforce the patent, terminate the license agreement, and bring a patent infringement action if petitioner did not pay. Because such an action could have resulted in petitioner's being ordered to pay treble damages and attorney's fees and enjoined from selling Synagis, which accounts for more than 80 percent of its sales revenue, petitioner paid the royalties under protest and filed this action for declaratory and other relief. The District Court dismissed the declaratory-judgment claims for lack of subject-matter jurisdiction because, under Federal Circuit precedent, a patent licensee in good standing cannot establish an Article III case or controversy with regard to the patent's validity, enforceability, or scope. The Federal Circuit affirmed.

Held:

1. Contrary to respondents' assertion that only a freestanding patent invalidity claim is at issue, the record establishes that petitioner has raised and preserved the contract claim that, because of patent invalidity, unenforceability, and noninfringement, no royalties are owing. Pp. 123–125.

2. The Federal Circuit erred in affirming the dismissal of this action for lack of subject-matter jurisdiction. The standards for determining whether a particular declaratory-judgment action satisfies the case-or-controversy requirement—*i. e.*, "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant" relief, *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 273—are satisfied here even though petitioner did not refuse to make royalty payments under the license agreement. Where

Syllabus

threatened *government* action is concerned, a plaintiff is not required to expose himself to liability before bringing suit to challenge the basis for the threat. His own action (or inaction) in failing to violate the law eliminates the imminent threat of prosecution, but nonetheless does not eliminate Article III jurisdiction because the threat-eliminating behavior was effectively coerced. Similarly, where the plaintiff's self-avoidance of imminent injury is coerced by the threatened enforcement action of *a private party* rather than the government, lower federal and state courts have long accepted jurisdiction. In its only decision in point, this Court held that a licensee's failure to cease its royalty payments did not render nonjusticiable a dispute over the patent's validity. *Altvater* v. *Freeman*, 319 U. S. 359, 364. Though *Altvater* involved an injunction, it acknowledged that the licensees had the option of stopping payments in defiance of the injunction, but that the *consequence* of doing so would be to risk "actual [and] treble damages in infringement suits" by the patentees, a consequence also threatened in this case. *Id.*, at 365. Respondents' assertion that the parties in effect settled this dispute when they entered into their license agreement is mistaken. Their appeal to the common-law rule that a party to a contract cannot both challenge its validity and continue to reap its benefits is also unpersuasive. Lastly, because it was raised for the first time here, this Court does not decide respondents' request to affirm the dismissal of the declaratory-judgment claims on discretionary grounds. That question and any merits-based arguments for denial of declaratory relief are left for the lower courts on remand. Pp. 126–137.

427 F. 3d 958, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, SOUTER, GINSBURG, BREYER, and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 137.

John G. Kester argued the cause for petitioner. With him on the briefs were *Paul B. Gaffney*, *Janet C. Fisher*, *Aaron P. Maurer*, *Harvey Kurzweil*, *Aldo Badini*, and *Henry J. Ricardo*.

Deanne E. Maynard argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Hungar*, *John M. Whealan*, and *Joseph G. Piccolo*.

Maureen E. Mahoney argued the cause for respondents. With her on the brief for respondent Genentech, Inc., were *J. Scott Ballenger*, *Amanda P. Biles*, *Daniel M. Wall*, *Mark A. Flagel*, *Roy E. Hofer*, *Meredith Martin Addy*, *John W. Keker*, and *Mark A. Lemley*. *Paul M. Smith*, *William M. Hohengarten*, *Ian Heath Gershengorn*, *Joseph M. Lipner*, *Laura W. Brill*, and *Jason Linder* filed a brief for respondent City of Hope.*

JUSTICE SCALIA delivered the opinion of the Court.

We must decide whether Article III's limitation of federal courts' jurisdiction to "Cases" and "Controversies," reflected in the "actual controversy" requirement of the Declaratory Judgment Act, 28 U. S. C. §2201(a), requires a patent li-

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*Briefs of *amici curiae* urging reversal were filed for the Generic Pharmaceutical Association by *Theodore Case Whitehouse*; for Medtronic, Inc., by *Kenneth C. Bass III* and *Robert G. Sterne*; for the Natural Resources Defense Council, Inc., by *Scott L. Nelson*, *Brian Wolfman*, and *Michael E. Wall*; and for Three Intellectual Property Professors by *Jay Dratler, Jr.*, and *A. Samuel Oddi*, both *pro se*.

Briefs of *amici curiae* urging affirmance were filed for the American Bar Association by *Michael S. Greco*, *Richard L. Rainey*, and *David H. Remes*; for the American Intellectual Property Law Association by *Edward R. Reines*, *Amber H. Rovner*, and *Melvin C. Garner*; for the Boston Patent Law Association by *Erik Paul Belt*; for a Group of Law Professors by *David Hricik*, *pro se*; for the New York Intellectual Property Law Association by *David F. Ryan* and *Christopher A. Hughes*; for the Pharmaceutical Research and Manufacturers of America by *Marjorie E. Powell*; for Qualcomm Inc. et al. by *E. Joshua Rosenkranz* and *Alan H. Blankenheimer*; for the Trustees of Columbia University in the City of New York et al. by *Jerrold J. Ganzfried*, *John F. Stanton*, *Teresa M. Corbin*, *Jennifer A. Sklenar*, and *Richard G. Taranto*; for 3M et al. by *Gary L. Griswold*, *Steven W. Miller*, *Q. Todd Dickinson*, and *John A. Dragseth*; for John R. Allison et al. by *Thomas F. Cotter*, *Mr. Allison*, *Christopher A. Cotropia*, *Thomas G. Field, Jr.*, and *Michael S. Mireles*, all *pro se*; and for Richard L. Donaldson et al. by *Justin A. Nelson*, *Parker C. Folse III*, *Brooke A. M. Taylor*, and *Richard A. Epstein*.

Christine E. Lehman, *James B. Monroe*, and *D. Brian Kacedon* filed a brief for the Licensing Executives Society (U. S. A. & Canada), Inc., as *amicus curiae*.

censee to terminate or be in breach of its license agreement before it can seek a declaratory judgment that the underlying patent is invalid, unenforceable, or not infringed.

I

Because the declaratory-judgment claims in this case were disposed of at the motion-to-dismiss stage, we take the following facts from the allegations in petitioner's amended complaint and the unopposed declarations that petitioner submitted in response to the motion to dismiss. Petitioner MedImmune, Inc., manufactures Synagis, a drug used to prevent respiratory tract disease in infants and young children. In 1997, petitioner entered into a patent license agreement with respondent Genentech, Inc. (which acted on behalf of itself as patent assignee and on behalf of the coassignee, respondent City of Hope). The license covered an existing patent relating to the production of "chimeric antibodies" and a then-pending patent application relating to "the coexpression of immunoglobulin chains in recombinant host cells." Petitioner agreed to pay royalties on sales of "Licensed Products," and respondents granted petitioner the right to make, use, and sell them. The agreement defined "Licensed Products" as a specified antibody, "the manufacture, use or sale of which . . . would, if not licensed under th[e] Agreement, infringe one or more claims of either or both of [the covered patents,] which have neither expired nor been held invalid by a court or other body of competent jurisdiction from which no appeal has been or may be taken." App. 399. The license agreement gave petitioner the right to terminate upon six months' written notice.

In December 2001, the "coexpression" application covered by the 1997 license agreement matured into the "Cabilly II" patent. Soon thereafter, respondent Genentech delivered petitioner a letter expressing its belief that Synagis was covered by the Cabilly II patent and its expectation that petitioner would pay royalties beginning March 1, 2002. Petitioner did not think royalties were owing, believing that the

Cabilly II patent was invalid and unenforceable,[1] and that its claims were in any event not infringed by Synagis. Nevertheless, petitioner considered the letter to be a clear threat to enforce the Cabilly II patent, terminate the 1997 license agreement, and sue for patent infringement if petitioner did not make royalty payments as demanded. If respondents were to prevail in a patent infringement action, petitioner could be ordered to pay treble damages and attorney's fees, and could be enjoined from selling Synagis, a product that has accounted for more than 80 percent of its revenue from sales since 1999. Unwilling to risk such serious consequences, petitioner paid the demanded royalties "under protest and with reservation of all of [its] rights." *Id.*, at 426. This declaratory-judgment action followed.

Petitioner sought the declaratory relief discussed in detail in Part II below. Petitioner also requested damages and an injunction with respect to other federal and state claims not relevant here. The District Court granted respondents' motion to dismiss the declaratory-judgment claims for lack of subject-matter jurisdiction, relying on the decision of the United States Court of Appeals for the Federal Circuit in *Gen-Probe Inc.* v. *Vysis, Inc.*, 359 F. 3d 1376 (2004). *Gen-Probe* had held that a patent licensee in good standing cannot establish an Article III case or controversy with regard to validity, enforceability, or scope of the patent because the license agreement "obliterate[s] any reasonable apprehension" that the licensee will be sued for infringement. *Id.*, at 1381. The Federal Circuit affirmed the District Court, also relying on *Gen-Probe*. 427 F. 3d 958 (2005). We granted certiorari. 546 U. S. 1169 (2006).

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[1] Hereinafter, invalidity and unenforceability will be referred to simply as invalidity, with similar abbreviation of positive (validity and enforceability) and adjectival (valid and invalid, enforceable and unenforceable) forms.

II

At the outset, we address a disagreement concerning the nature of the dispute at issue here—whether it involves only a freestanding claim of patent invalidity or rather a claim that, both because of patent invalidity and because of noninfringement, no royalties are owing under the license agreement.[2] That probably makes no difference to the ultimate issue of subject-matter jurisdiction, but it is well to be clear about the nature of the case before us.

Respondents contend that petitioner "is not seeking an interpretation of its present contractual obligations." Brief for Respondent Genentech 37; see also Brief for Respondent City of Hope 48–49. They claim this for two reasons: (1) because there is no dispute that Synagis infringes the Cabilly II patent, thereby making royalties payable; and (2) because while there is a dispute over patent validity, the contract calls for royalties on an infringing product whether or not the underlying patent is valid. See Brief for Respondent Genentech 7, 37. The first point simply does not comport with the allegations of petitioner's amended complaint. The very first count requested a "*DECLARATORY JUDGMENT ON CONTRACTUAL RIGHTS AND OBLIGATIONS*," and stated that petitioner "disputes its obligation to make payments under the 1997 License Agreement because [petitioner's] sale of its Synagis® product does not infringe any valid claim of the [Cabilly II] Patent." App. 136. These contentions were repeated throughout the complaint.

[2] The dissent contends that the question on which we granted certiorari does not reach the contract claim. *Post*, at 140–141 (opinion of THOMAS, J.). We think otherwise. The question specifically refers to the "license agreement" and to the contention that the patent is "not infringed." Pet. for Cert. (i). The unmistakable meaning is that royalties are not owing under the contract.

Id., at 104, 105, 108, 147.[3] And the phrase "does not infringe any *valid* claim" (emphasis added) cannot be thought to be no more than a challenge to the patent's validity, since elsewhere the amended complaint states with unmistakable clarity that "the patent is . . . not infringed by [petitioner's] Synagis® product and that [petitioner] owes no payments under license agreements with [respondents]." *Id.*, at 104.[4]

As to the second point, petitioner assuredly did contend that it had no obligation under the license to pay royalties on an invalid patent. *Id.*, at 104, 136, 147. Nor is that contention frivolous. True, the license requires petitioner to pay royalties *until* a patent claim has been held invalid by a competent body, and the Cabilly II patent has not. But the license at issue in *Lear, Inc.* v. *Adkins*, 395 U. S. 653, 673 (1969), similarly provided that "royalties are to be paid until such time as the 'patent . . . is held invalid,'" and we rejected the argument that a repudiating licensee must comply with its contract and pay royalties until its claim is vindicated in court. We express no opinion on whether a *nonrepudiating licensee* is similarly relieved of its contract obligation during a successful challenge to a patent's validity—that is, on the applicability of licensee estoppel under these circumstances. Cf. *Studiengesellschaft Kohle, m. b. H.* v. *Shell Oil Co.*, 112 F. 3d 1561, 1568 (CA Fed. 1997) ("[A] licensee . . . cannot

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[3] In addition to agreeing with respondents that (despite the face of the complaint) this case does not involve a contract claim, *post*, at 140–141, the dissent evidently thinks the contract claim is weak. That, however, goes to the merits of the claim, not to its existence or the courts' jurisdiction over it. Nor is the alleged "lack of specificity in the complaint," *post*, at 140, a jurisdictional matter.

[4] The dissent observes that the District Court assumed that Synagis was "'covered by the patents at issue.'" *Post*, at 141 (quoting App. 349–350). But the quoted statement is taken from the District Court's separate opinion granting summary judgment *on petitioner's antitrust claims*. For purposes of that earlier ruling, whether Synagis infringed the patent was irrelevant, and there was no harm in accepting respondents' contention on the point. This tells us nothing, however, about petitioner's contract claim or the District Court's later jurisdictional holding with respect to it.

invoke the protection of the *Lear* doctrine until it (i) actually ceases payment of royalties, and (ii) provides notice to the licensor that the reason for ceasing payment of royalties is because it has deemed the relevant claims to be invalid"). All we need determine is whether petitioner has alleged a contractual dispute. It has done so.

Respondents further argue that petitioner waived its contract claim by failing to argue it below. Brief for Respondent Genentech 10–11; Tr. of Oral Arg. 30–31. The record reveals, however, that petitioner raised the contract point before the Federal Circuit. See Brief for Plantiff-Appellant MedImmune, Inc., in Nos. 04–1300, 04–1384 (CA Fed.), p. 38 ("Here, MedImmune is seeking to define its rights and obligations under its contract with Genentech—precisely the type of action the Declaratory Judgment Act contemplates"). That petitioner limited its contract argument to a few pages of its appellate brief does not suggest a waiver; it merely reflects counsel's sound assessment that the argument would be futile. The Federal Circuit's *Gen-Probe* precedent precluded jurisdiction over petitioner's contract claims, and the panel below had no authority to overrule *Gen-Probe*.[5] Having determined that petitioner has raised and preserved a contract claim,[6] we turn to the jurisdictional question.

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[5] Respondents obviously agree. They said in the District Court: "The facts of this case are, for purposes of this motion, identical to the facts in *Gen-Probe*. . . . Like Gen-Probe, MedImmune filed an action seeking a declaratory judgment that: (a) it owes nothing under its license agreement with Genentech because its sales of Synagis® allegedly do not infringe any valid claim of the [Cabilly II] patent; (b) the [Cabilly II] patent is invalid; (c) the [Cabilly II] patent is unenforceable; and (d) Synagis® does not infringe the [Cabilly II] patent." App. in Nos. 04–1300, 04–1384 (CA Fed.), p. A2829 (record citations omitted).

[6] The dissent asserts that petitioner did not allege a contract claim in its opening brief or at oral argument. *Post*, at 141. This is demonstrably false. See, *e. g.*, Brief for Petitioner 8 (the Cabilly II patent was "not infringed by Synagis®, so that royalties were not due under the license"); *id.*, at 12 (Summary of Argument: "[The purpose] of the Declaratory Judgment Act . . . was to allow contracting parties to resolve their disputes in court without breach and without risking economic destruction and multi-

III

The Declaratory Judgment Act provides that, "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U. S. C. §2201(a). There was a time when this Court harbored doubts about the compatibility of declaratory-judgment actions with Article III's case-or-controversy requirement. See *Willing* v. *Chicago Auditorium Assn.*, 277 U. S. 274, 289 (1928); *Liberty Warehouse Co.* v. *Grannis*, 273 U. S. 70 (1927); see also *Gordon* v. *United States*, 117 U. S. Appx. 697, 702 (1864) (the last opinion of Taney, C. J., published posthumously) ("The award of execution is . . . an essential part of every judgment passed by a court exercising judicial power"). We dispelled those doubts, however, in *Nashville, C. & St. L. R. Co.* v. *Wallace*, 288 U. S. 249 (1933), holding (in a case involving a declaratory judgment rendered in state court) that an appropriate action for declaratory relief *can* be a case or controversy under Article III. The federal Declaratory Judgment Act was signed into law the following year, and we upheld its constitutionality in *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227 (1937). Our opinion

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plying damages. . . . The holding [below] . . . would . . . disrupt the law of licenses and contracts throughout the economy, essentially undoing the achievement of the reformers of 1934"); Tr. of Oral Arg. 15 ("We're saying this is a contract dispute"); *id.*, at 16 ("[T]he purpose of [the Declaratory Judgment Act] is so that contracts can be resolved without breach"); *id.*, at 57 ("The contract claim is clear in the record. It's at page 136 of the joint appendix. I don't think more needs to be said about it").

The dissent also asserts that the validity of the contract claim "hinges entirely upon a determination of the patent's validity," since "'the license requires [MedImmune] to pay royalties *until* a patent claim has been held invalid by a competent body,'" *post*, at 141, quoting *supra*, at 124. This would be true only if the license required royalties on all products under the sun, and not just those that practice the patent. Of course it does not.

explained that the phrase "case of actual controversy" in the Act refers to the type of "Cases" and "Controversies" that are justiciable under Article III. *Id.*, at 240.

Aetna and the cases following it do not draw the brightest of lines between those declaratory-judgment actions that satisfy the case-or-controversy requirement and those that do not. Our decisions have required that the dispute be "definite and concrete, touching the legal relations of parties having adverse legal interests"; and that it be "real and substantial" and "admi[t] of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Id.*, at 240–241. In *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 273 (1941), we summarized as follows: "Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment."[7]

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[7] The dissent asserts, *post*, at 137, that "the declaratory judgment procedure cannot be used to obtain advanced rulings on matters that would be addressed in a future case of actual controversy." As our preceding discussion shows, that is not so. If the dissent's point is simply that a defense cannot be raised by means of a declaratory-judgment action where there is no "actual controversy" or where it would be "premature," phrasing that argument as the dissent has done begs the question: whether this is an actual, ripe controversy.

Coffman v. *Breeze Corps.*, 323 U. S. 316, 323–324 (1945), cited *post*, at 139, does not support the dissent's view (which is why none of the parties cited it). There, a patent owner sued to enjoin his licensee from paying accrued royalties to the Government under the Royalty Adjustment Act of 1942, and sought to attack the constitutionality of the Act. The Court held the request for declaratory judgment and injunction nonjusticiable because the patent owner asserted no right to recover the royalties and there was no indication that the licensee would even raise the Act as a defense to suit for the royalties. The other case the dissent cites for the point, *Calderon* v. *Ashmus*, 523 U. S. 740, 749 (1998), simply holds that a

There is no dispute that these standards would have been satisfied if petitioner had taken the final step of refusing to make royalty payments under the 1997 license agreement. Respondents claim a right to royalties under the licensing agreement. Petitioner asserts that no royalties are owing because the Cabilly II patent is invalid and not infringed; and alleges (without contradiction) a threat by respondents to enjoin sales if royalties are not forthcoming. The factual and legal dimensions of the dispute are well defined and, but for petitioner's continuing to make royalty payments, nothing about the dispute would render it unfit for judicial resolution. Assuming (without deciding) that respondents here could not claim an anticipatory breach and repudiate the license, the continuation of royalty payments makes what would otherwise be an imminent threat at least remote, if not nonexistent. As long as those payments are made, there is no risk that respondents will seek to enjoin petitioner's sales. Petitioner's own acts, in other words, eliminate the imminent threat of harm.[8] The question before us is whether this causes the dispute no longer to be a case or controversy within the meaning of Article III.

Our analysis must begin with the recognition that, where threatened action by *government* is concerned, we do not

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litigant may not use a declaratory-judgment action to obtain piecemeal adjudication of defenses that *would not finally and conclusively resolve* the underlying controversy. That is, of course, not the case here.

[8]The justiciability problem that arises, when the party seeking declaratory relief is himself preventing the complained-of injury from occurring, can be described in terms of standing (whether plaintiff is threatened with "imminent" injury in fact "'fairly . . . trace[able] to the challenged action of the defendant,'" *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560 (1992)), or in terms of ripeness (whether there is sufficient "hardship to the parties [in] withholding court consideration" until there is enforcement action, *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 149 (1967)). As respondents acknowledge, standing and ripeness boil down to the same question in this case. Brief for Respondent Genentech 24; Brief for Respondent City of Hope 30–31.

require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat—for example, the constitutionality of a law threatened to be enforced. The plaintiff's own action (or inaction) in failing to violate the law eliminates the imminent threat of prosecution, but nonetheless does not eliminate Article III jurisdiction. For example, in *Terrace* v. *Thompson*, 263 U. S. 197 (1923), the State threatened the plaintiff with forfeiture of his farm, fines, and penalties if he entered into a lease with an alien in violation of the State's anti-alien land law. Given this genuine threat of enforcement, we did not require, as a prerequisite to testing the validity of the law in a suit for injunction, that the plaintiff bet the farm, so to speak, by taking the violative action. *Id.*, at 216. See also, *e. g.*, *Village of Euclid* v. *Ambler Realty Co.*, 272 U. S. 365 (1926); *Ex parte Young*, 209 U. S. 123 (1908). Likewise, in *Steffel* v. *Thompson*, 415 U. S. 452 (1974), we did not require the plaintiff to proceed to distribute handbills and risk actual prosecution before he could seek a declaratory judgment regarding the constitutionality of a state statute prohibiting such distribution. *Id.*, at 458–460. As then-Justice Rehnquist put it in his concurrence, "the declaratory judgment procedure is an alternative to pursuit of the arguably illegal activity." *Id.*, at 480. In each of these cases, the plaintiff had eliminated the imminent threat of harm by simply not doing what he claimed the right to do (enter into a lease, or distribute handbills at the shopping center). That did not preclude subject-matter jurisdiction because the threat-eliminating behavior was effectively coerced. See *Terrace*, *supra*, at 215–216; *Steffel*, *supra*, at 459. The dilemma posed by that coercion—putting the challenger to the choice between abandoning his rights or risking prosecution—is "a dilemma that it was the very purpose of the Declaratory Judgment Act to ameliorate." *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 152 (1967).

Supreme Court jurisprudence is more rare regarding application of the Declaratory Judgment Act to situations in which the plaintiff's self-avoidance of imminent injury is coerced by threatened enforcement action of *a private party* rather than the government. Lower federal courts, however (and state courts interpreting declaratory-judgment acts requiring "actual controversy"), have long accepted jurisdiction in such cases. See, *e. g.*, *Keener Oil & Gas Co.* v. *Consolidated Gas Utils. Corp.*, 190 F. 2d 985, 989 (CA10 1951); *American Machine & Metals, Inc.* v. *De Bothezat Impeller Co.*, 166 F. 2d 535 (CA2 1948); *Hess* v. *Country Club Park*, 213 Cal. 613, 614, 2 P. 2d 782, 783 (1931); *Washington-Detroit Theater Co.* v. *Moore*, 249 Mich. 673, 675, 229 N. W. 618, 618–619 (1930); see also Advisory Committee's Note on Fed. Rule Civ. Proc. 57, 28 U. S. C. App., p. 790.[9]

The only Supreme Court decision in point is, fortuitously, close on its facts to the case before us. *Altvater* v. *Freeman*, 319 U. S. 359 (1943), held that a licensee's failure to cease its payment of royalties did not render nonjusticiable a dispute over the validity of the patent. In that litigation, several patentees had sued their licensees to enforce territorial restrictions in the license. The licensees filed a counterclaim for declaratory judgment that the underlying patents were invalid, in the meantime paying "under protest" royalties required by an injunction the patentees had obtained in an earlier case. The patentees argued that "so long as [licensees] continue to pay royalties, there is only an academic, not a real controversy, between the parties." *Id.*, at 364. We

[9] The dissent claims the cited cases do not "rely on the coercion inherent in making contractual payments." *Post*, at 145, n. 3. That is true; they relied on (to put the matter as the dissent puts it) the coercion inherent in complying with *other* claimed contractual obligations. The dissent fails to explain why a contractual obligation of payment is magically different. It obviously is not. In our view, of course, the relevant coercion is not compliance with the claimed contractual obligation, but rather the consequences of failure to do so.

rejected that argument and held that the declaratory-judgment claim presented a justiciable case or controversy: "The fact that royalties were being paid did not make this a 'difference or dispute of a hypothetical or abstract character.'" *Ibid.* (quoting *Aetna*, 300 U. S., at 240). The royalties "were being paid under protest and under the compulsion of an injunction decree," and "[u]nless the injunction decree were modified, the only other course [of action] was to defy it, and to risk not only actual but treble damages in infringement suits." 319 U. S., at 365. We concluded that "the requirements of [a] case or controversy are met where payment of a claim is demanded as of right and where payment is made, but where the involuntary or coercive nature of the exaction preserves the right to recover the sums paid or to challenge the legality of the claim." *Ibid.*[10]

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[10] The dissent incorrectly asserts that *Altvater* required actual infringement, quoting wildly out of context (and twice, for emphasis) *Altvater*'s statement that "'[t]o hold a patent valid if it is not infringed is to decide a hypothetical case.'" *Post*, at 139, 143 (quoting 319 U. S., at 363). In the passage from which the quotation was plucked, the *Altvater* Court was distinguishing the Court's earlier decision in *Electrical Fittings Corp.* v. *Thomas & Betts Co.*, 307 U. S. 241 (1939), which involved an affirmative defense of patent invalidity that had become moot in light of a finding of no infringement. Here is the full quotation:

"The District Court [in *Electrical Fittings*] adjudged a claim of a patent valid although it dismissed the bill for failure to prove infringement. We held that the finding of validity was immaterial to the disposition of the cause and that the winning party might appeal to obtain a reformation of the decree. To hold a patent valid if it is not infringed is to decide a hypothetical case. But the situation in the present case is quite different. We have here not only bill and answer but a counterclaim. Though the decision of non-infringement disposes of the bill and answer, it does not dispose of the counterclaim which raises the question of validity." *Altvater*, *supra*, at 363 (footnote omitted).

As the full quotation makes clear, the snippet quoted by the dissent has nothing to do with whether infringement must be actual or merely threatened. Indeed, it makes clear that in appropriate cases to hold a noninfringed patent valid is *not* to decide a hypothetical case.

Though the dissent acknowledges the central lesson of *Altvater*, *post*, at 144—that payment of royalties under "coercive" circumstances does not

The Federal Circuit's *Gen-Probe* decision distinguished *Altvater* on the ground that it involved the compulsion of an injunction. But *Altvater* cannot be so readily dismissed. Never mind that the injunction had been privately obtained and was ultimately within the control of the patentees, who could permit its modification. More fundamentally, and contrary to the Federal Circuit's conclusion, *Altvater* did not say that the coercion dispositive of the case was governmental, but suggested just the opposite. The opinion acknowledged that the licensees had the option of stopping payments in defiance of the injunction, but explained that the *consequence* of doing so would be to risk "actual [and] treble damages in infringement suits" by the patentees. 319 U. S., at 365. It significantly did not mention the threat of prosecution for contempt, or any other sort of governmental sanction. Moreover, it cited approvingly a treatise which said that an "actual or threatened serious injury to business or employment" by a private party can be as coercive as other forms of coercion supporting restitution actions at common law; and that "[t]o imperil a man's livelihood, his business enterprises, or his solvency, [was] ordinarily quite as coercive" as, for example, "detaining his property." F. Woodward, The Law of Quasi Contracts §218 (1913), cited in *Altvater*, *supra*, at 365.[11]

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eliminate jurisdiction—it attempts to limit that rationale to the particular facts of *Altvater*. But none of *Altvater*'s "unique facts," *post*, at 144, suggests that a different test applies to the royalty payments here. Other than a conclusory assertion that the payments here were "voluntarily made," *post*, at 146, the dissent never explains why the threat of treble damages and the loss of 80 percent of petitioner's business does not fall within *Altvater*'s coercion rationale.

[11] Even if *Altvater* could be distinguished as an "injunction" case, it would still contradict the Federal Circuit's "reasonable apprehension of suit" test (or, in its evolved form, the "reasonable apprehension of *imminent* suit" test, *Teva Pharm. USA, Inc.* v. *Pfizer, Inc.*, 395 F. 3d 1324, 1333 (2005)). A licensee who pays royalties under compulsion of an injunction

Jurisdiction over the present case is not contradicted by *Willing* v. *Chicago Auditorium Assn.*, 277 U. S. 274. There a ground lessee wanted to demolish an antiquated auditorium and replace it with a modern commercial building. The lessee believed it had the right to do this without the lessors' consent, but was unwilling to drop the wrecking ball first and test its belief later. Because there was no declaratory-judgment act at the time under federal or applicable state law, the lessee filed an action to remove a "cloud" on its lease. This Court held that an Article III case or controversy had not arisen because "[n]o defendant ha[d] wronged the plaintiff or ha[d] threatened to do so." *Id.*, at 288, 290. It was true that one of the colessors had disagreed with the lessee's interpretation of the lease, but that happened in an "informal, friendly, private conversation," *id.*, at 286, a year before the lawsuit was filed; and the lessee never even bothered to approach the other colessors. The Court went on to remark that "[w]hat the plaintiff seeks is simply a declaratory judgment," and "[t]o grant that relief is beyond the power conferred upon the federal judiciary." *Id.*, at 289. Had *Willing* been decided after the enactment (and our upholding) of the Declaratory Judgment Act, and had the legal disagree-

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has no more apprehension of imminent harm than a licensee who pays royalties for fear of treble damages and an injunction fatal to his business. The reasonable-apprehension-of-suit test also conflicts with our decisions in *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 273 (1941), where jurisdiction obtained even though the collision-victim defendant could not have sued the declaratory-judgment plaintiff-insurer without first obtaining a judgment against the insured; and *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227, 239 (1937), where jurisdiction obtained even though the very reason the insurer sought declaratory relief was that the insured had given no indication that he would file suit. It is also in tension with *Cardinal Chemical Co.* v. *Morton Int'l, Inc.*, 508 U. S. 83, 98 (1993), which held that appellate affirmance of a judgment of noninfringement, eliminating any apprehension of suit, does not moot a declaratory judgment counterclaim of patent invalidity.

ment between the parties been as lively as this one, we are confident a different result would have obtained. The rule that a plaintiff must destroy a large building, bet the farm, or (as here) risk treble damages and the loss of 80 percent of its business before seeking a declaration of its actively contested legal rights finds no support in Article III.[12]

Respondents assert that the parties in effect settled this dispute when they entered into the 1997 license agreement. When a licensee enters such an agreement, they contend, it essentially purchases an insurance policy, immunizing it from suits for infringement so long as it continues to pay royalties and does not challenge the covered patents. Permitting it

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[12] The dissent objects to our supposed "extension of *Steffel* [v. *Thompson*] . . . to apply to voluntarily accepted contractual obligations between private parties." *Post*, at 145. The criticism is misdirected in several respects. The coercion principle upon which we rely today did not originate with *Steffel* v. *Thompson*, 415 U. S. 452 (1974), see *supra*, at 128–129, and we have no opportunity to *extend* it to private litigation, because *Altvater* v. *Freeman*, 319 U. S. 359 (1943), already did so, see *supra*, at 132. Moreover, even if today's decision could be described as an "extension of *Steffel*" to private litigation, the dissent identifies no principled reason why that extension is not appropriate. Article III does not favor litigants challenging threatened *government* enforcement action over litigants challenging threatened *private* enforcement action. Indeed, the latter is perhaps the easier category of cases, for it presents none of the difficult issues of federalism and comity with which we wrestled in *Steffel*. See 415 U. S., at 460–475.

The dissent accuses the Court of misapplying *Steffel*'s rationale. *Post*, at 146. It contends that *Steffel* would apply here only if respondents had threatened petitioner with a patent infringement suit *in the absence of a license agreement*, because only then would petitioner be put to the choice of selling its product or facing suit. *Post*, at 145–146. Here, the dissent argues, the license payments are "voluntarily made." *Post*, at 146. If one uses the word "voluntarily" so loosely, it could be applied with equal justification (or lack thereof) to the *Steffel* plaintiff's "voluntary" refusal to distribute handbills. We find the threat of treble damages and loss of 80 percent of petitioner's business every bit as coercive as the modest penalties for misdemeanor trespass threatened in *Steffel*. Only by ignoring the consequences of the threatened action in this case can the dissent claim that today's opinion "contains no limiting principle whatsoever," *post*, at 146.

to challenge the validity of the patent without terminating or breaking the agreement alters the deal, allowing the licensee to continue enjoying its immunity while bringing a suit, the elimination of which was part of the patentee's *quid pro quo*. Of course even if it were valid, this argument would have no force with regard to petitioner's claim that the agreement does not call for royalties because their product does not infringe the patent. But even as to the patent invalidity claim, the point seems to us mistaken. To begin with, it is not clear where the prohibition against challenging the validity of the patents is to be found. It can hardly be implied from the mere promise to pay royalties on patents "which have neither expired nor been held invalid by a court or other body of competent jurisdiction from which no appeal has been or may be taken," App. 399. Promising to pay royalties on patents that have not been held invalid does not amount to a promise *not to seek* a holding of their invalidity.

Respondents appeal to the common-law rule that a party to a contract cannot at one and the same time challenge its validity and continue to reap its benefits, citing *Commodity Credit Corp.* v. *Rosenberg Bros. & Co.*, 243 F. 2d 504, 512 (CA9 1957), and *Kingman & Co.* v. *Stoddard*, 85 F. 740, 745 (CA7 1898). *Lear*, they contend, did not suspend that rule for patent licensing agreements, since the plaintiff in that case had already repudiated the contract. Even if *Lear*'s repudiation of the doctrine of licensee estoppel was so limited (a point on which, as we have said earlier, we do not opine), it is hard to see how the common-law rule has any application here. Petitioner is not repudiating or impugning the contract while continuing to reap its benefits. Rather, it is asserting that the contract, properly interpreted, does not prevent it from challenging the patents, and does not require the payment of royalties because the patents do not cover its products and are invalid. Of course even if respondents were correct that the licensing agreement or the common-law rule precludes this suit, the consequence would be that

respondents win this case *on the merits—not* that the very genuine contract dispute disappears, so that Article III jurisdiction is somehow defeated. In short, Article III jurisdiction has nothing to do with this "insurance-policy" contention.

Lastly, respondents urge us to affirm the dismissal of the declaratory-judgment claims on discretionary grounds. The Declaratory Judgment Act provides that a court "*may* declare the rights and other legal relations of any interested party," 28 U. S. C. § 2201(a) (emphasis added), not that it *must* do so. This text has long been understood "to confer on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants." *Wilton* v. *Seven Falls Co.*, 515 U. S. 277, 286 (1995); see also *Cardinal Chemical Co.* v. *Morton Int'l, Inc.*, 508 U. S. 83, 95, n. 17 (1993); *Brillhart* v. *Excess Ins. Co. of America*, 316 U. S. 491, 494–496 (1942). We have found it "more consistent with the statute," however, "to vest district courts with discretion in the first instance, because facts bearing on the usefulness of the declaratory judgment remedy, and the fitness of the case for resolution, are peculiarly within their grasp." *Wilton*, *supra*, at 289. The District Court here gave no consideration to discretionary dismissal, since, despite its "serious misgivings" about the Federal Circuit's rule, it considered itself bound to dismiss by *Gen-Probe*. App. to Pet. for Cert. 31a. Discretionary dismissal was irrelevant to the Federal Circuit for the same reason. Respondents have raised the issue for the first time before this Court, exchanging competing accusations of inequitable conduct with petitioner. See, *e. g.*, Brief for Respondent Genentech 42–44; Reply Brief for Petitioner 17, and n. 15. Under these circumstances, it would be imprudent for us to decide whether the District Court should, or must, decline to issue the requested declaratory relief. We leave the equitable, prudential, and policy arguments in favor of such a discretionary dismissal for the lower courts' consideration on remand. Similarly available

for consideration on remand are any merits-based arguments for denial of declaratory relief.

* * *

We hold that petitioner was not required, insofar as Article III is concerned, to break or terminate its 1997 license agreement before seeking a declaratory judgment in federal court that the underlying patent is invalid, unenforceable, or not infringed. The Court of Appeals erred in affirming the dismissal of this action for lack of subject-matter jurisdiction.

The judgment of the Court of Appeals is reversed, and the cause is remanded for proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, dissenting.

We granted certiorari in this case to determine whether a patent licensee in good standing must breach its license prior to challenging the validity of the underlying patent pursuant to the Declaratory Judgment Act, 28 U. S. C. §2201. 546 U. S. 1169 (2006). The answer to that question is yes. We have consistently held that parties do not have standing to obtain rulings on matters that remain hypothetical or conjectural. We have also held that the declaratory judgment procedure cannot be used to obtain advanced rulings on matters that would be addressed in a future case of actual controversy. MedImmune has sought a declaratory judgment for precisely that purpose, and I would therefore affirm the Court of Appeals' holding that there is no Article III jurisdiction over MedImmune's claim. The Court reaches the opposite result by extending the holding of *Steffel* v. *Thompson*, 415 U. S. 452 (1974), to private contractual obligations. I respectfully dissent.

I

Article III of the Constitution limits the judicial power to the adjudication of "Cases" or "Controversies." §2. We

have held that the Declaratory Judgment Act extends "to controversies which are such in the constitutional sense." *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227, 240 (1937). In the context of declaratory judgment actions, this Court's cases have provided a uniform framework for assessing whether an Article III case or controversy exists. In the constitutional sense, a "Controversy" is "distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot." *Ibid.* (citing *United States* v. *Alaska S. S. Co.*, 253 U. S. 113, 116 (1920)). "The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests." 300 U. S., at 240–241. Finally, "[i]t must be a real and substantial controversy . . . , as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Id.*, at 241.

The Declaratory Judgment Act did not (and could not) alter the constitutional definition of "case or controversy" or relax Article III's command that an actual case or controversy exist before federal courts may adjudicate a question. See *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 272–273 (1941). Thus, this Court has held that "the operation of the Declaratory Judgment Act is procedural only." *Aetna Life Ins.*, 300 U. S., at 240. In other words, the Act merely provides a different procedure for bringing an actual case or controversy before a federal court. The Court applied that principle in *Aetna Life Ins.*, where an insurance company brought a declaratory judgment action against an insured who claimed he had become disabled, had formally presented his claims, and had refused to make any more insurance payments. *Id.*, at 242. In the course of deciding that it could entertain the insurer's declaratory judgment action, the Court specifically noted that, had the insured filed his traditional cause of action first, "there would have been no question that the controversy was of a justiciable nature . . . ." *Id.*, at 243. Accordingly, the Act merely

provided a different procedural tool that allowed the insurance company to bring an otherwise justiciable controversy before a federal court.

We have also held that no controversy exists when a declaratory judgment plaintiff attempts to obtain a premature ruling on potential defenses that would typically be adjudicated in a later actual controversy. In *Coffman* v. *Breeze Corps.*, 323 U. S. 316 (1945), a patent owner brought a declaratory judgment action against his licensees seeking to have the Royalty Adjustment Act of 1942 declared unconstitutional and to enjoin his licensees from paying accrued royalties to the Government. This Court held that no case or controversy existed because the validity of the Royalty Adjustment Act would properly arise only as a defense in a suit by the patent holder against the licensees to recover royalties. *Id.*, at 323–324. Accordingly, the complaint at issue was "but a request for an advisory opinion as to the validity of a defense to a suit for recovery of the royalties." *Id.*, at 324. And the Court noted that "[t]he declaratory judgment procedure . . . may not be made the medium for securing an advisory opinion in a controversy which has not arisen." *Ibid.*; see also *Calderon* v. *Ashmus*, 523 U. S. 740, 747 (1998) (holding that a prisoner may not use a declaratory judgment action to determine the validity of a defense that a State might raise in a future habeas proceeding).

These principles apply with equal force in the patent licensing context. In *Altvater* v. *Freeman*, 319 U. S. 359, 365–366 (1943), the Court, quite unremarkably, held that a "licensee" had standing to bring a declaratory judgment counterclaim asserting the affirmative defense of patent invalidity in response to a patent infringement suit. But not to be mistaken, the *Altvater* Court expressly stated that "[t]o hold a patent valid if it is not infringed is to decide a hypothetical case." *Id.*, at 363. So too, in *Cardinal Chemical Co.* v. *Morton Int'l, Inc.*, 508 U. S. 83, 86 (1993), the affirmative defense of patent invalidity was raised as a coun-

terclaim to a patent infringement suit. Although we held that a finding of noninfringement on appeal did not moot a counterclaim alleging invalidity, *id.*, at 102–103, we stated that our holding was limited to the jurisdiction of an appellate court and reiterated that "[i]n the trial court, of course, a party seeking a declaratory judgment has the burden of establishing the existence of an actual case or controversy," *id.*, at 95.

II

Against the foregoing background, the case before us is not a justiciable case or controversy under Article III.

A

As a threshold matter, I disagree with the Court's characterization of this case as including a "contractual dispute." *Ante*, at 125. To substantiate this characterization, the Court points to a three-paragraph count in MedImmune's complaint entitled "'*DECLARATORY JUDGMENT ON CONTRACTUAL RIGHTS AND OBLIGATIONS*'" and to MedImmune's broad allegations that "'its Synagis® product does not infringe any valid claim of the [Cabilly II] Patent.'" *Ante*, at 123. Nowhere in its complaint did MedImmune state why "sale[s] of its Synagis® product d[o] not infringe any valid claim of the [Cabilly II] Patent." App. 136.[1] Given the lack of specificity in the complaint, it is hardly surprising that the Court never explains what the supposed contract dispute is actually about. A fair reading of the amended complaint (and a review of the litigation thus far) shows that MedImmune's "contract count" simply posits that because the patent is invalid and unenforceable (as alleged in counts II and III), MedImmune is not bound by its con-

[1] In addition, the fact that MedImmune did not identify anywhere in the record which provision of the contract was at issue suggests that there is no contractual provision to "be construed before or after breach." Advisory Committee's Notes on Fed. Rule Civ. Proc. 57, 28 U. S. C. App., pp. 790–791.

tractual obligations. As the Court admits, "the license requires [MedImmune] to pay royalties *until* a patent claim has been held invalid by a competent body . . . ." *Ante*, at 124 (emphasis in original). Thus, even assuming the existence of a cognizable contract claim, the validity of that claim hinges entirely upon a determination of the patent's validity, independent of any contractual question. As such, MedImmune's "contract claim" simply repackages its patent invalidity claim.

Probably for this reason, MedImmune has not pursued a contract claim at any level of the litigation. The District Court stated that the product that was the subject of the license, Synagis, was "covered by the patents at issue," App. 349–350, and MedImmune has never challenged that characterization. The Federal Circuit decided this case on the sole ground that a licensee in good standing may not bring a declaratory judgment action to challenge the validity of the underlying patent without some threat or apprehension of a patent infringement suit. See 427 F. 3d 958, 965 (2005). The question MedImmune presented in its petition for certiorari, which we accepted without alteration, says nothing about a contract claim. Neither does MedImmune's opening brief allege a contractual dispute. Even at oral argument, it was not MedImmune, but an *amicus*, that alleged there was a contract dispute at issue in this case. Tr. of Oral Arg. 21–22.

In short, MedImmune did not "rais[e] and preserv[e] a contract claim." *Ante*, at 125. In reaching a contrary conclusion, the Court states that its identification of a contract claim "probably makes no difference to the ultimate" outcome of this case. *Ante*, at 123. This may very well be true, if only because of the broad scope of the Court's holding.

B

The facts before us present no case or controversy under Article III. When MedImmune filed this declaratory judg-

ment action challenging the validity of the Cabilly II patent, it was under no threat of being sued by Genentech for patent infringement. This was so because MedImmune was a licensee in good standing that had made all necessary royalty payments. Thus, by voluntarily entering into and abiding by a license agreement with Genentech, MedImmune removed any threat of suit. See *ante*, at 128 (stating the threat of suit was "remote, if not nonexistent"). MedImmune's actions in entering into and continuing to comply with the license agreement deprived Genentech of any cause of action against MedImmune. Additionally, MedImmune had no cause of action against Genentech. Patent invalidity is an affirmative defense to patent infringement, not a free-standing cause of action. See 35 U. S. C. §§282(2)–(3). Therefore, here, the Declaratory Judgment Act must be something more than an alternative procedure for bringing an otherwise actual case or controversy before a federal court. But see *Aetna Life Ins.*, 300 U. S., at 240 ("[T]he operation of the Declaratory Judgment Act is procedural only").

Because neither Genentech nor MedImmune had a cause of action, MedImmune's prayer for declaratory relief can be reasonably understood only as seeking an advisory opinion about an affirmative defense it might use in some future litigation. MedImmune wants to know whether, if it decides to breach its license agreement with Genentech, and if Genentech sues it for patent infringement, it will have a successful affirmative defense. Presumably, upon a favorable determination, MedImmune would then stop making royalty payments, knowing in advance that the federal courts stand behind its decision. Yet as demonstrated above, the Declaratory Judgment Act does not allow federal courts to give advisory rulings on the potential success of an affirmative defense before a cause of action has even accrued. *Calderon*, 523 U. S., at 747 (dismissing a suit that "attempt[ed] to

gain a litigation advantage by obtaining an advance ruling on an affirmative defense"); see also *Coffman*, 323 U. S., at 324 (rejecting use of the Declaratory Judgment Act as a "medium for securing an advisory opinion in a controversy which has not arisen"). MedImmune has therefore asked the courts to render "an opinion advising what the law would be upon a hypothetical state of facts." *Aetna Life Ins.*, *supra*, at 241; see also *Public Serv. Comm'n of Utah* v. *Wycoff Co.*, 344 U. S. 237, 244 (1952) ("The disagreement must not be nebulous or contingent but must have taken on fixed and final shape . . . "). A federal court cannot, consistent with Article III, provide MedImmune with such an opinion.

Finally, as this Court has plainly stated in the context of a counterclaim declaratory judgment action challenging the validity of a patent, "[t]o hold a patent valid if it is not infringed is to decide a hypothetical case." *Altvater*, 319 U. S., at 363. Of course, MedImmune presents exactly that case. Based on a clear reading of our precedent, I would hold that this case presents no actual case or controversy.

III

To reach today's result, the Court misreads our precedent and expands the concept of coercion from *Steffel*, 415 U. S. 452, to reach voluntarily accepted contractual obligations between private parties.

A

The Court inappropriately relies on *Altvater*, which is inapplicable to this case for three reasons. First, in *Altvater*, the affirmative defense of patent invalidity arose in a declaratory judgment motion filed as a counterclaim to a patent infringement suit. See 319 U. S., at 360. Second, the opinion in *Altvater* proceeds on the understanding that no license existed. Both the District Court and the Court of Appeals had already held that the underlying license had been terminated prior to the filing of the case. *Id.*, at 365 ("Royalties

were being demanded and royalties were being paid. But they were being paid . . . under the compulsion of an injunction decree"). Third, and related, though the one-time licensee continued to pay royalties, it did so under the compulsion of an injunction that had been entered in a prior case. *Ibid.* *Altvater* simply held that under the unique facts of that case, the Court of Appeals erred in considering the declaratory judgment counterclaim moot because the "involuntary or coercive nature of the exaction preserve[d] the right to recover the sums paid or to challenge the legality of the claim." *Ibid.*

Cardinal Chemical Co., 508 U. S. 83, is similarly inapt here. In that case, as in *Altvater*, the defendant raised the affirmative defense of patent invalidity in a counterclaim to a patent infringement suit. 508 U. S., at 86. We specifically held that a finding of noninfringement on appeal did not moot a counterclaim alleging invalidity. *Id.*, at 102–103. But we stressed:

> "[T]he issue before us, therefore[,] concern[s] the jurisdiction of an intermediate appellate court—not the jurisdiction of . . . a trial court . . . . In the trial court, of course, a party seeking a declaratory judgment has the burden of establishing the existence of an actual case or controversy." *Id.*, at 95.

We went on to offer a hypothetical that showed a party could seek a declaratory judgment "[i]n patent litigation . . . even if the patentee has not filed an infringement action." *Ibid.* However, that hypothetical involved a patent holder that threatened an infringement suit against a competitor (*not* a licensee) that continued to sell the allegedly infringing product and faced growing liability. In doing so, we hypothesized a situation that paralleled the facts in *Aetna Life Ins.*: The patentee had a cause of action against an alleged infringer and could have brought suit at any moment, and the declaratory judgment procedure simply offered the alleged

infringer a different method of bringing an otherwise justiciable case or controversy into court.[2]

B

The Court's more serious error is its extension of *Steffel*, *supra*, to apply to voluntarily accepted contractual obligations between private parties. No court has ever taken such a broad view of *Steffel*.

In *Steffel*, the Court held that in certain limited circumstances, a party's anticipatory cause of action qualified as a case or controversy under Article III. Based expressly on the coercive nature of governmental power, the Court found that "it is not necessary that petitioner first expose himself to *actual arrest* or *prosecution* to be entitled to challenge a *statute* that he claims deters the exercise of his constitutional rights." *Id.*, at 459 (emphasis added). Limited, as it is, to governmental power, particularly the power of arrest and prosecution, *Steffel* says nothing about coercion in the context of private contractual obligations. It is therefore not surprising that, until today, this Court has never applied *Steffel* and its theory of coercion to private contractual obligations; indeed, no court has ever done so.[3]

The majority not only extends *Steffel* to cases that do not involve governmental coercion, but also extends *Steffel*'s rationale. If "coercion" were understood as the Court used

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[2] Additionally, *Lear, Inc.* v. *Adkins*, 395 U. S. 653 (1969), has little to do with this case. It addressed the propriety and extent of the common-law doctrine of licensee estoppel, and the licensee in *Lear* had ceased making payments under the license agreement—a fact that makes the case singularly inapposite here. *Id.*, at 659–660. *Lear* did not involve the Declaratory Judgment Act because the case was brought as a breach-of-contract action for failure to pay royalties.

[3] Admitting that such decisions are "rare," *ante*, at 130, the Court cites cases predating *Steffel* that hold that a court may construe contractual provisions prior to breach. Those cases do not rely on the coercion inherent in making contractual payments. See, *e. g.*, *Keener Oil & Gas Co.* v. *Consolidated Gas Util. Corp.*, 190 F. 2d 985, 989 (CA10 1951).

that term in *Steffel*, it would apply only if Genentech had threatened MedImmune with a patent infringement suit *in the absence of a license agreement*. At that point, MedImmune would have had a choice, as did the declaratory plaintiff in *Steffel*, either to cease the otherwise protected activity (here, selling Synagis) or to continue in that activity and face the threat of a lawsuit. But MedImmune faced no such choice. Here, MedImmune could continue selling its product without threat of suit because it had eliminated any risk of suit by entering into a license agreement. By holding that the voluntary choice to enter an agreement to avoid some other coerced choice is itself coerced, the Court goes far beyond *Steffel*.

The majority explains that the "coercive nature of the exaction preserves the right . . . to challenge the legality of the claim." *Ante*, at 131 (internal quotation marks omitted). The coercive nature of what "exaction"? The answer has to be the voluntarily made license payments because there was no threat of suit here. By holding that contractual obligations are sufficiently coercive to allow a party to bring a declaratory judgment action, the majority has given every patent licensee a cause of action and a free pass around Article III's requirements for challenging the validity of licensed patents. But the reasoning of today's opinion applies not just to patent validity suits. Indeed, today's opinion contains no limiting principle whatsoever, casting aside Justice Stewart's understanding that *Steffel*'s use would "be exceedingly rare." 415 U. S., at 476 (concurring opinion).

For the foregoing reasons, I respectfully dissent.

Syllabus

BURTON *v.* STEWART, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 05–9222. Argued November 7, 2006—Decided January 9, 2007

Petitioner Burton was initially convicted of rape, robbery, and burglary and sentenced to prison in 1994, but the state trial court entered amended judgments and sentences in 1996 and 1998. While state review of his sentence was pending, Burton sought federal habeas disputing his convictions but not his sentence, and listing 1994 as the judgment date. The District Court denied relief, and the Ninth Circuit affirmed. In 2002, he filed another federal habeas petition, contesting the 1998 judgment and challenging only his sentence. The District Court and the Ninth Circuit denied relief on the merits, rejecting the State's contention that the District Court lacked jurisdiction to entertain the petition because Burton had not obtained an order from the Ninth Circuit authorizing him to file a "second or successive" habeas petition as required by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U. S. C. §2244(b)(3).

Held: Because Burton's 2002 petition was a "second or successive" petition, his failure to obtain authorization from the Ninth Circuit deprived the District Court of jurisdiction to hear his claims. When Burton filed each of his petitions, he was being held in custody pursuant to the same 1998 judgment. The Ninth Circuit's reasoning that the 2002 petition was not "second or successive" because, under *McCleskey* v. *Zant*, 499 U. S. 467, Burton had a legitimate excuse for not raising his sentencing challenges in his first petition as they had not yet been exhausted is inconsistent with the plurality opinion in *Rose* v. *Lundy*, 455 U. S. 509, 520–522, which stated that a petitioner with a mixed petition had two options: to withdraw the petition, exhaust the remaining claims, and return with a fully exhausted petition, or to proceed on the exhausted claims while risking subjecting later petitions that raise new claims to rigorous procedural obstacles. There is no basis for supposing that a petitioner who chooses the second option may later assert that a subsequent petition is not "second or successive" precisely because his new claims were unexhausted at the time he filed his first petition. *Stewart* v. *Martinez-Villareal*, 523 U. S. 637, and *Slack* v. *McDaniel*, 529 U. S. 473, distinguished. Finally, in contending that he risked losing the op-

Syllabus

portunity to challenge his conviction in federal court due to AEDPA's 1-year statute of limitations, Burton misreads AEDPA, which states that the limitations period applicable to "a person in custody pursuant to the judgment of a State court" runs from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review," 28 U. S. C. §2244(d)(1)(A). Burton's limitations period did not begin until both his conviction *and* sentence "became final by the conclusion of direct review or the expiration of the time for seeking such review"—which occurred well *after* he filed his first petition. See *Berman* v. *United States*, 302 U. S. 211, 212.

142 Fed. Appx. 297, vacated and remanded.

Jeffrey L. Fisher, by appointment of the Court, *post*, p. 807, argued the cause for petitioner. With him on the briefs were *Pamela S. Karlan*, *Amy Howe*, *Kevin K. Russell*, *Brian Tsuchida*, *Laura E. Mate*, and *Thomas C. Goldstein*.

William Berggren Collins, Deputy Solicitor General of Washington, argued the cause for respondent. With him on the brief were *Rob McKenna*, Attorney General, *Carol A. Murphy*, Deputy Solicitor General, and *Paul Douglas Weisser* and *John J. Samson*, Assistant Attorneys General.

Matthew D. Roberts argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Fisher*, *Deputy Solicitor General Dreeben*, and *Joel M. Gershowitz*.*

**Sheryl Gordon McCloud*, *Pamela Harris*, and *Suzanne Elliott* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging reversal.

A brief of *amici curiae* urging affirmance was filed for the State of Indiana et al. by *Steve Carter*, Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, and *Stephen R. Creason*, and by the Attorneys General for their respective States as follows: *Terry Goddard* of Arizona, *Mike Beebe* of Arkansas, *John W. Suthers* of Colorado, *Charles J. Crist, Jr.*, of Florida, *Mark J. Bennett* of Hawaii, *Lisa Madigan* of Illinois, *Michael A. Cox* of Michigan, *Mike McGrath* of Montana, *George J. Chanos* of Nevada, *Jim Petro* of Ohio, *Hardy Myers* of Oregon, *Henry D. McMaster*

PER CURIAM.

We granted certiorari in this case, 547 U. S. 1178 (2006), to determine whether our decision in *Blakely* v. *Washington*, 542 U. S. 296 (2004), announced a new rule and, if so, whether it applies retroactively on collateral review. We do not answer these questions, however, because petitioner—a state prisoner seeking postconviction relief from the federal courts—failed to comply with the gatekeeping requirements of 28 U. S. C. §2244(b). That failure deprived the District Court of jurisdiction to hear his claims. Accordingly, we vacate the judgment of the Court of Appeals and remand with instructions to direct the District Court to dismiss petitioner's habeas corpus application for lack of jurisdiction.

I

On October 31, 1994, a Washington jury convicted petitioner Lonnie Burton of rape, robbery, and burglary. App. 3–4. The state trial court initially entered judgment and sentence on December 19, 1994 (1994 judgment). In that judgment, the court sentenced Burton to a total of 562 months in prison. *State* v. *Burton*, No. 35747–6–I etc., 1997 WL 306429, *12 (Wash. App., June 9, 1997). The trial court rested the 562-month sentence on two alternative grounds under Washington's determinate sentencing scheme. First, it sentenced Burton to within-guidelines sentences for each offense—153 months for robbery, 105 months for burglary, and 304 months for rape—and directed that the sentences be served consecutively, for a total term of 562 months. *Id.*, at *13. Under Washington's "multiple offense policy," imposi-

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of South Carolina, *Lawrence E. Long* of South Dakota, *Greg Abbott* of Texas, *Robert F. McDonnell* of Virginia, *William Sorrell* of Vermont, and *Patrick J. Crank* of Wyoming.

Briefs of *amici curiae* were filed for the Criminal Justice Legal Foundation by *Kent S. Scheidegger*; and for the Law Offices of Robert A. Ratliff by *Mr. Ratliff, pro se.*

tion of consecutive sentences constitutes an "exceptional" sentence, Wash. Rev. Code §§9.94A.120(18), 9.94A.400(1)(a) (2000),[1] but the trial court justified such a sentence on the ground that running the three terms concurrently would result in a sentence "clearly too lenient" in light of the purposes of Washington's sentencing scheme. See §9.94A.390(2)(i).[2] The second basis on which the court calculated a 562-month term was by running the sentences concurrently but imposing an exceptional sentence of 562 months solely for the rape conviction—again on the ground that the total sentence would otherwise be "clearly too lenient." *State* v. *Burton*, 1997 WL 306429, at *13.

After an unrelated prior conviction was overturned, Burton requested resentencing. Accordingly, over a year after the 1994 judgment, the trial court entered an amended judgment and sentence (1996 judgment), which, after recalculating Burton's offender scores, imposed a new sentence that relied solely on an exceptional 562-month sentence for the rape conviction, run concurrently with the other two terms. *Ibid.*; App. 45. On direct review, the Washington Court of Appeals upheld Burton's conviction, *State* v. *Burton*, *supra*, a decision the Washington Supreme Court declined to review, *State* v. *Burton*, 133 Wash. 2d 1025, 950 P. 2d 475 (1997), cert. denied, 523 U. S. 1082 (1998). The State Court of Appeals remanded for resentencing, however, because the trial court's exclusive reliance on the exceptional rape sentence decreased Burton's potential early release credits, raising vindictiveness concerns. *State* v. *Burton*, 1997 WL 306429, at *14.

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[1] As we noted in *Blakely* v. *Washington*, 542 U. S. 296, 298, n. 1 (2004), Washington has since amended and recodified its criminal code. Citations are to provisions in effect at the time of Burton's sentencing.

[2] Specifically, the standard range sentences for rape, robbery, and burglary, if run concurrently, would have punished Burton as if he had committed only the rape. *State* v. *Burton*, No. 35747–6–I etc., 1997 WL 306429, *11–*12 (Wash. App., June 9, 1997).

In response, on March 16, 1998, the trial court entered a second amended judgment and sentence (1998 judgment). App. 3. In this judgment, the trial court recited the jury's 1994 guilty verdicts, *id.*, at 3–4, and again imposed a 562-month sentence, reverting to its original basis for doing so—running the three within-guidelines sentences consecutively, *id.*, at 7, 29–32. Burton sought review of this sentence, but the Washington courts eventually rejected his challenges both on direct review and in state postconviction proceedings. *Id.*, at 43–55; App. to Brief for Petitioner 1a–4a.

On December 28, 1998, while state review of his sentence was still pending, Burton filed a petition under 28 U. S. C. §2254 for a writ of habeas corpus in the United States District Court for the Western District of Washington (1998 petition). App. 34. The standard form he filled out warned applicants that they must "ordinarily first exhaust . . . available state court remedies as to each ground on which" they sought "action by the federal court," or run the risk of being "barred from presenting additional grounds at a later date." *Id.*, at 37–38. Burton nonetheless challenged his custody only by disputing the constitutionality of his three convictions, not by pressing any sentencing claims. Where the form requested the "[d]ate of judgment of conviction," Burton listed "Dec. 16, 1994," corresponding roughly to the date of the 1994 judgment. *Id.*, at 34. The form asked whether the applicant had "any petition or appeal now pending in any court, either state or federal, *as to the judgment under attack*," to which Burton answered "Yes," explaining that "[the] sentence I received at resentencing is on direct appeal." *Id.*, at 40 (emphasis added). The District Court denied relief, *id.*, at 42, and the United States Court of Appeals for the Ninth Circuit affirmed, *Burton* v. *Walter*, 21 Fed. Appx. 632 (2001), cert. denied, 535 U. S. 1060 (2002).

Over three years subsequent to filing the 1998 petition, after the Washington courts had rejected his sentencing challenges, Burton filed another federal habeas petition (2002

petition), again in the Western District of Washington. This time, Burton claimed to be contesting the 1998 judgment, and challenged only the constitutionality of his sentence. In particular, he alleged that it violated our decision in *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000), to the extent the sentencing court departed from a standard sentence based on its own factual determinations. The District Court again denied the petition, App. 77, and the Ninth Circuit again affirmed, *Burton* v. *Waddington*, 142 Fed. Appx. 297 (2005). Both courts rejected the State's contention that the District Court lacked jurisdiction to entertain the petition because Burton had not obtained an order from the Court of Appeals authorizing him to file a "second or successive" habeas petition, as required by the habeas gatekeeping provisions, 28 U. S. C. § 2244(b)(3). On the merits, the Ninth Circuit rejected Burton's *Apprendi* claim and agreed with the State that Burton could not benefit from *Blakely* v. *Washington*, 542 U. S. 296, because that decision announced a new rule that did not apply retroactively to Burton's sentence. 142 Fed. Appx., at 299.

It is this petition, the 2002 petition, that is before us today. We conclude, though, that because the 2002 petition is a "second or successive" petition that Burton did not seek or obtain authorization to file in the District Court, the District Court never had jurisdiction to consider it in the first place.

II

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) established a stringent set of procedures that a prisoner "in custody pursuant to the judgment of a State court," 28 U. S. C. § 2254(a), must follow if he wishes to file a "second or successive" habeas corpus application challenging that custody, § 2244(b)(1). In pertinent part, before filing the application in the district court, a prisoner "shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

§2244(b)(3)(A). A three-judge panel of the court of appeals may authorize the filing of the second or successive application only if it presents a claim not previously raised that satisfies one of the two grounds articulated in §2244(b)(2). §2244(b)(3)(C); *Gonzalez* v. *Crosby*, 545 U. S. 524, 529–530 (2005); see also *Felker* v. *Turpin*, 518 U. S. 651, 656–657, 664 (1996).

Burton's 2002 petition was a "second or successive" habeas application for which he did not seek, much less obtain, authorization to file. When Burton filed his first petition, the 1998 petition, he was being held in custody pursuant to the 1998 judgment, which had been entered some nine months earlier. When he filed his second petition, the 2002 petition, he was still being held in custody pursuant to the same 1998 judgment. In short, Burton twice brought claims contesting the same custody imposed by the same judgment of a state court. As a result, under AEDPA, he was required to receive authorization from the Court of Appeals before filing his second challenge. Because he did not do so, the District Court was without jurisdiction to entertain it.

The Ninth Circuit determined that the 2002 petition was not "second or successive" because, under *McCleskey* v. *Zant*, 499 U. S. 467 (1991), Burton had a "legitimate excuse for failing to raise" his sentencing challenges in the 1998 petition. 142 Fed. Appx., at 299 (quoting *McCleskey*, *supra*, at 490; internal quotation marks omitted). Specifically, the Ninth Circuit reasoned that because Burton had not exhausted his sentencing claims in state court when he filed the 1998 petition, "they were not ripe for federal habeas review" at that time. 142 Fed. Appx., at 298.

We assume for purposes of this case, without deciding, that the Ninth Circuit's "legitimate excuse" approach to determining whether a petition is "second or successive" is correct. That court's ruling that Burton had a "legitimate excuse," however, is inconsistent with the precise practice we have explained governs in circumstances such as Burton's.

The plurality opinion in *Rose* v. *Lundy*, 455 U. S. 509, 520–522 (1982), stated that district courts should dismiss "mixed petitions"—those with exhausted and unexhausted claims—and that petitioners with such petitions have two options. They may withdraw a mixed petition, exhaust the remaining claims, and return to district court with a fully exhausted petition. We have held that in such circumstances the later filed petition would not be "second or successive." *Slack* v. *McDaniel*, 529 U. S. 473, 485–486 (2000).

Alternatively, prisoners filing mixed petitions may proceed with only the exhausted claims, but doing so risks subjecting later petitions that raise new claims to rigorous procedural obstacles. *Lundy*, *supra*, at 520–521 (plurality opinion); see also *Slack*, *supra*, at 486–487. As noted, the form Burton used in filing his first petition warned of just that consequence. App. 37–38; *supra*, at 151. There is no basis in our cases for supposing, as the Ninth Circuit did, that a petitioner with unexhausted claims who chooses the second of these options—who elects to proceed to adjudication of his exhausted claims—may later assert that a subsequent petition is not "second or successive" precisely because his new claims were unexhausted at the time he filed his first petition. This reasoning conflicts with both *Lundy* and § 2244(b) and would allow prisoners to file separate habeas petitions in the not uncommon situation where a conviction is upheld but a sentence is reversed. Such a result would be inconsistent with both the exhaustion requirement, with its purpose of reducing "piecemeal litigation," *Duncan* v. *Walker*, 533 U. S. 167, 180 (2001), and AEDPA, with its goal of "streamlining federal habeas proceedings," *Rhines* v. *Weber*, 544 U. S. 269, 277 (2005).

Burton directs us to two decisions, *Stewart* v. *Martinez-Villareal*, 523 U. S. 637 (1998), and *Slack*, *supra*, in which we have not regarded subsequent petitions to be "second or successive." But these cases are readily distinguishable. In *Martinez-Villareal*, we held that the claim of a capital prisoner that he was insane and therefore could not be put

to death was necessarily unripe until the State issued a warrant for his execution, and so the prisoner's subsequent request for consideration of that previously unripe claim was not "second or successive" for purposes of §2244(b). 523 U. S., at 644–645. But unlike Burton, the prisoner there had attempted to bring this claim in his initial habeas petition, prompting us to look to *Lundy* in concluding that the claim "should be treated in the same manner as the claim of a petitioner who returns to a federal habeas court after exhausting state remedies," that is, characterizing it as not "second or successive." *Martinez-Villareal*, 523 U. S., at 644. Indeed, we expressly declined to address the situation where a petitioner fails to raise the claim in the initial petition. See *id.*, at 645, n. In this case, Burton did not raise the relevant claims in his 1998 petition. Without more, therefore, our holding in *Martinez-Villareal* does not support the conclusion that Burton's 2002 petition was not "second or successive."

Slack is equally unhelpful to Burton; that decision merely confirmed that when a "first" petition is dismissed because it contains unexhausted claims, a prisoner returning later with a fully exhausted petition would not confront the "second or successive" bar. 529 U. S., at 485–486. We held that a "petition filed after a mixed petition has been dismissed under *Rose* v. *Lundy before the district court adjudicated any claims* is to be treated as 'any other first petition' and is not a second or successive petition." *Id.*, at 487 (emphasis added). See also *id.*, at 478 ("[A] habeas petition which is filed after an initial petition was dismissed *without adjudication on the merits* for failure to exhaust state remedies is not a 'second or successive' petition" (emphasis added)). Burton's case is quite different—his first petition was not subject to dismissal as containing unexhausted claims, and in fact was adjudicated on the merits.

Moving beyond the ground relied upon by the Ninth Circuit, Burton argues that his 1998 and 2002 petitions challenged different judgments. He notes that his 1998 petition

identified the pertinent judgment as the 1994 judgment, App. 34, while the 2002 petition challenged the sentence imposed in the 1998 judgment. The 1998 judgment, however, had been entered nine months before Burton filed his first petition. That judgment, the same one challenged in the subsequent 2002 petition, was the judgment pursuant to which Burton was being detained. Unlike *In re Taylor*, 171 F. 3d 185 (CA4 1999), cited by Burton, there was no new judgment intervening between the two habeas petitions. In his 1998 petition, Burton specifically described his unexhausted sentencing claims as claims "as to the judgment under attack," App. 40, belying any notion that those claims arose from a judgment distinct from the one challenged in 1998.[3]

Burton finally contends that had he not filed the 1998 petition when he did, and instead waited until state review of his sentencing claims was complete, he risked losing the opportunity to challenge his conviction in federal court due to AEDPA's 1-year statute of limitations. See §2244(d)(1). But this argument misreads AEDPA, which states that the limitations period applicable to "a person in custody pursuant to the judgment of a State court" shall run from, as relevant here, "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." §2244(d)(1)(A). "Final judgment in a criminal case means sentence. The sentence is the judgment." *Berman* v. *United States*, 302 U. S. 211, 212 (1937). Accordingly, Burton's limitations period did not begin until both his conviction *and* sentence "became final

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[3] For the same reasons, Burton's reliance on *Castro* v. *United States*, 540 U. S. 375 (2003), is misplaced. That case reversed a lower court's recharacterization of a motion requesting a new trial pursuant to Federal Rule of Criminal Procedure 33 as a first habeas petition. Here Burton filed his first habeas petition as such in 1998; it involves no similar "recharacterization" to recognize that the judgment pursuant to which Burton was confined at the time was the same judgment that gave rise to the sentence later challenged in his second habeas petition.

by the conclusion of direct review or the expiration of the time for seeking such review"—which occurred well *after* Burton filed his 1998 petition.

Burton argues in rebuttal that this reasoning would necessarily mean the District Court lacked jurisdiction to consider the 1998 petition, but he is mistaken. Section 2254(a) states that a district court "shall entertain" a habeas petition "in behalf of a person in custody pursuant to the judgment of a State court." When he filed the 1998 petition, Burton assuredly was "in custody pursuant to the judgment of a State court"—even if, at that point, the 1998 judgment was not final for purposes of triggering AEDPA's statute of limitations.

The long and short of it is that Burton neither sought nor received authorization from the Court of Appeals before filing his 2002 petition, a "second or successive" petition challenging his custody, and so the District Court was without jurisdiction to entertain it. The judgment of the Court of Appeals for the Ninth Circuit is therefore vacated, and the case is remanded with instructions to direct the District Court to dismiss the habeas petition for lack of jurisdiction.

It is so ordered.

Syllabus

NORFOLK SOUTHERN RAILWAY CO. *v.* SORRELL

CERTIORARI TO THE COURT OF APPEALS OF MISSOURI

No. 05–746. Argued October 10, 2006—Decided January 10, 2007

Respondent Sorrell was injured while working for the petitioner railroad (Norfolk), and sought damages for his injuries in Missouri state court under the Federal Employers' Liability Act (FELA), which makes a railroad liable for an employee's injuries "resulting in whole or in part from [the railroad's] negligence," Section 1. FELA reduces any damages awarded to an employee "in proportion to the amount [of negligence] attributable to" the employee, Section 3. Missouri's jury instructions apply different causation standards to railroad negligence and employee contributory negligence in FELA actions. An employee will be found contributorily negligent if his negligence "directly contributed to cause" the injury, while railroad negligence is measured by whether the railroad's negligence "contributed in whole or in part" to the injury. After the trial court overruled Norfolk's objection that the instruction on contributory negligence contained a different standard than the railroad negligence instruction, the jury awarded Sorrell $1.5 million. The Missouri Court of Appeals affirmed, rejecting Norfolk's contention that the same causation standard should apply to both parties' negligence.

Held:

1. Norfolk's attempt to expand the question presented to encompass *what* the FELA causation standard should be, not simply whether the standard should be the same for railroad negligence and employee contributory negligence, is rejected. This Court is typically reluctant to permit parties to smuggle additional questions into a case after the grant of certiorari. Although the Court could consider the question of what standard applies as anterior to the question whether the standards may differ, the substantive content of the causation standard is a significant enough issue that the Court prefers not to address it when it has not been fully presented. Pp. 163–165.

2. The same causation standard applies to railroad negligence under FELA Section 1 as to employee contributory negligence under Section 3. Absent express language to the contrary, the elements of a FELA claim are determined by reference to the common law, *Urie* v. *Thompson*, 337 U. S. 163, 182, and unless common-law principles are expressly rejected in FELA's text, they are entitled to great weight, *Consolidated Rail Corporation* v. *Gottshall*, 512 U. S. 532, 544. The prevailing common-law view at the time FELA was enacted was that

Syllabus

the causation standards for negligence and contributory negligence were the same, and FELA did not expressly depart from this approach. This is strong evidence against Missouri's practice of applying different standards, which is apparently unique among the States. Departing from the common-law practice would in any event have been a peculiar approach for Congress to take in FELA: As a practical matter, it is difficult to reduce damages "in proportion" to the employee's negligence if the relevance of each party's negligence is measured by a different causation standard. The Court thinks it far simpler for a jury to conduct the apportionment FELA mandates if the jury compares like with like. Contrary to Sorrell's argument, the use of the language "in whole or in part" with respect to railroad negligence in FELA Section 1, but not with respect to employee contributory negligence in Section 3, does not justify a departure from the common-law practice of applying a single causation standard. It would have made little sense to include the "in whole or in part" language in Section 3; if the employee's contributory negligence contributed "in whole" to his injury, there would be no recovery against the railroad in the first place. The language made sense in Section 1, however, to clarify that there could be recovery against the railroad even if it were only partially responsible for the injury. In any event, there is no reason to read the statute as a whole to encompass different causation standards, since Section 3 simply does not address causation. Finally, FELA's remedial purpose cannot compensate for the lack of statutory text: FELA does not abrogate the common-law approach. A review of FELA model instructions indicates that there are a variety of ways to instruct a jury to apply the same causation standard to railroad negligence and employee contributory negligence. Missouri has the same flexibility as other jurisdictions in deciding how to do so, so long as it now joins them in applying a single standard. On remand, the Missouri Court of Appeals should address Sorrell's argument that any error in the jury instructions was harmless, and should determine whether a new trial is required. Pp. 165–172.

170 S. W. 3d 35, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, SOUTER, THOMAS, BREYER, and ALITO, JJ., joined. SOUTER, J., filed a concurring opinion, in which SCALIA and ALITO, JJ., joined, *post*, p. 172. GINSBURG, J., filed an opinion concurring in the judgment, *post*, p. 177.

Carter G. Phillips argued the cause for petitioner. With him on the briefs were *Stephen B. Kinnaird*, *Eric A. Shumsky*, *Laura D. Hunt*, *James W. Erwin*, and *David Dick*.

Mary L. Perry argued the cause for respondent. With her on the brief were *Jerome J. Schlichter*, *Roger C. Denton*, and *Kathleen M. Sullivan*.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Timothy Sorrell, respondent in this Court, sustained neck and back injuries while working as a trackman for petitioner Norfolk Southern Railway Company. He filed suit in Missouri state court under the Federal Employers' Liability Act (FELA), 35 Stat. 65, as amended, 45 U. S. C. §§ 51–60, which makes railroads liable to their employees for injuries "resulting in whole or in part from the negligence" of the railroad, § 51. Contributory negligence is not a bar to recovery under FELA, but damages are reduced "in proportion to the amount of negligence attributable to" the employee, § 53. Sorrell was awarded $1.5 million in damages by a jury; Norfolk objects that the jury instructions reflected a more lenient causation standard for railroad negligence than for employee contributory negligence. We conclude that the causation standard under FELA should be the same for both categories of negligence, and accordingly vacate the decision below and remand for further proceedings.

I

On November 1, 1999, while working for Norfolk in Indiana, Sorrell was driving a dump truck loaded with asphalt to be used to repair railroad crossings. While he was driving between crossings on a gravel road alongside the tracks, another Norfolk truck approached, driven by fellow employee Keith Woodin. The two men provided very different accounts of what happened next, but somehow Sorrell's truck

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**Daniel Saphire* filed a brief for the Association of American Railroads as *amicus curiae* urging reversal; *Frank S. Ravitch* and *Brent O. Hatch* filed a brief for the American Train Dispatchers Association et al. as *amici curiae*.

veered off the road and tipped on its side, injuring him. According to Sorrell's testimony, Woodin forced Sorrell's truck off the road; according to Woodin, Sorrell drove his truck into a ditch.

On June 18, 2002, Sorrell filed suit against Norfolk in Missouri state court under FELA, alleging that Norfolk failed to provide him with a reasonably safe place to work and that its negligence caused his injuries. Norfolk responded that Sorrell's own negligence caused the accident.

Missouri purports to apply different standards of causation to railroad and employee contributory negligence in its approved jury instructions for FELA liability. The instructions direct a jury to find an employee contributorily negligent if the employee was negligent and his negligence "directly contributed to cause" the injury, Mo. Approved Jury Instr., Civ., No. 32.07(B), p. 519 (6th ed. 2002), while allowing a finding of railroad negligence if the railroad was negligent and its negligence contributed "in whole or in part" to the injury, *id.*, No. 24.01.[1]

When Sorrell proposed the Missouri approved instruction for employee contributory negligence, Norfolk objected on the ground that it provided a "different" and "much more exacting" standard for causation than that applicable with respect to the railroad's negligence under the Missouri instructions. App. to Pet. for Cert. 28a–29a. The trial court overruled the objection. App. 9–10. After the jury re-

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[1] Missouri in the past directed a jury to find a railroad liable if the railroad's negligence "directly resulted in whole or in part in injury to plaintiff." Mo. Approved Jury Instr., Civ., No. 24.01 (1964). This language persisted until 1978, when the instruction was modified to its present version. *Ibid.* (2d ed. 1969, Supp. 1980). The commentary explains that the word "direct" was excised because, under FELA, "the traditional doctrine of proximate (direct) cause is not applicable." *Id.*, No. 24.01, p. 187 (Committee's Comment (1978 new)). Cf. *Leake* v. *Burlington Northern R. Co.*, 892 S. W. 2d 359, 364–365 (Mo. App. 1995). The contributory negligence instruction, on the other hand, has remained unchanged. Mo. Approved Jury Instr., Civ., No. 32.07(B) (6th ed. 2002).

turned a verdict in favor of Sorrell, Norfolk moved for a new trial, repeating its contention that the different standards were improper because FELA's comparative fault system requires that the same causation standard apply to both categories of negligence. *Id.*, at 20. The trial court denied the motion. The Missouri Court of Appeals affirmed, rejecting Norfolk's contention that "the causation standard should be the same as to the plaintiff and the defendant." App. to Pet. for Cert. 7a, judgt. order reported at 170 S. W. 3d 35 (2005) *(per curiam)*. The court explained that Missouri procedural rules require that where an approved instruction exists, it must be given to the exclusion of other instructions. *Ibid.*; see Mo. Rule Civ. Proc. 70.02(b) (2006).

After the Missouri Supreme Court denied discretionary review, App. to Pet. for Cert. 31a, Norfolk sought certiorari in this Court, asking whether the Missouri courts erred in determining that "the causation standard for employee *contributory negligence* under [FELA] differs from the causation standard for railroad *negligence*." Pet. for Cert. i. Norfolk stated that Missouri was the only jurisdiction to apply different standards, and that this conflicted with several Federal Court of Appeals decisions insisting on a single standard of causation for both railroad and employee negligence. See, *e. g.*, *Page* v. *St. Louis Southwestern R. Co.*, 349 F. 2d 820, 823 (CA5 1965) ("[T]he better rule is one of a single standard"); *Ganotis* v. *New York Central R. Co.*, 342 F. 2d 767, 768–769 (CA6 1965) *(per curiam)* ("We do not believe that [FELA] intended to make a distinction between proximate cause when considered in connection with the carrier's negligence and proximate cause when considered in connection with the employee's contributory negligence"). In response, Sorrell did not dispute that Missouri courts apply "different causation standards . . . to plaintiff's and defendant's negligence in FELA actions: The defendant is subject to a more relaxed causation standard, but the plaintiff is sub-

ject only to the traditional common-law standard." Brief in Opposition 2. We granted certiorari. 547 U. S. 1127 (2006).

In briefing and argument before this Court, Norfolk has attempted to expand the question presented to encompass *what* the standard of causation under FELA should be, not simply whether the standard should be the same for railroad negligence and employee contributory negligence. In particular, Norfolk contends that the proximate cause standard reflected in the Missouri instruction for employee contributory negligence should apply to the railroad's negligence as well.

Sorrell raises both a substantive and procedural objection in response. Substantively, he argues that this Court departed from a proximate cause standard for railroad negligence under FELA in *Rogers* v. *Missouri Pacific R. Co.*, 352 U. S. 500 (1957). There we stated:

> "Under [FELA] the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought.
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> . . . . . .
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> "[F]or practical purposes the inquiry in these cases today rarely presents more than the single question whether negligence of the employer played any part, however small, in the injury or death which is the subject of the suit." *Id.*, at 506, 508.

Sorrell argues that these passages from *Rogers* have been interpreted to mean that a plaintiff's burden of proof on the question whether the railroad's negligence caused his injury is less onerous than the proximate cause standard prevailing at common law, citing cases such as *Consolidated Rail Corporation* v. *Gottshall*, 512 U. S. 532, 542–543 (1994); *Holbrook* v. *Norfolk Southern R. Co.*, 414 F. 3d 739, 741–742 (CA7 2005); *Hernandez* v. *Trawler Miss Vertie Mae, Inc.*, 187 F. 3d

432, 436 (CA4 1999); and *Summers* v. *Missouri Pacific R. Co.*, 132 F. 3d 599, 606–607 (CA10 1997).

Norfolk counters that *Rogers* did not alter the established common-law rule of proximate cause, but rather simply rejected a flawed and unduly stringent version of the rule, the so-called "sole proximate cause" test. According to Norfolk, while most courts of appeals may have read *Rogers* as Sorrell does, several State Supreme Courts disagree, see, *e. g.*, *Chapman* v. *Union Pacific R. Co.*, 237 Neb. 617, 626–629, 467 N. W. 2d 388, 395–396 (1991); *Marazzato* v. *Burlington Northern R. Co.*, 249 Mont. 487, 490–491, 817 P. 2d 672, 674 (1991), and "there is a deep conflict of authority on precisely that issue." Reply Brief for Petitioner 20, n. 10.

Sorrell's procedural objection is that we did not grant certiorari to determine the proper standard of causation for railroad negligence under FELA, but rather to decide whether different standards for railroad and employee negligence were permissible under the Act. What is more, Norfolk is not only enlarging the question presented, but taking a position on that enlarged question that is contrary to the position it litigated below. In the Missouri courts, Norfolk argued that Missouri applies different standards, and that the less rigorous standard applied to railroad negligence should also apply to employee contributory negligence. Thus, Norfolk did not object below on causation grounds to the railroad liability instruction, but only to the employee contributory negligence instruction. App. 9–10. Now Norfolk wants to argue the opposite—that the disparity in the standards should be resolved by applying the more rigorous contributory negligence standard to the railroad's negligence as well.

We agree with Sorrell that we should stick to the question on which certiorari was sought and granted. We are typically reluctant to permit parties to smuggle additional questions into a case before us after the grant of certiorari. See *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *U. S. Philips Corp.*, 510 U. S. 27, 31–34 (1993) *(per curiam)*. Although

Norfolk is doubtless correct that we could consider the question of what standard applies as anterior to the question whether the standards may differ, the issue of the substantive content of the causation standard is significant enough that we prefer not to address it when it has not been fully presented. We also agree with Sorrell that it would be unfair at this point to allow Norfolk to switch gears and seek a ruling from us that the standard should be proximate cause across the board.

What Norfolk *did* argue throughout is that the instructions, when given together, impermissibly created different standards of causation. It chose to present in its petition for certiorari the more limited question whether the courts below erred in applying standards that differ. That is the question on which we granted certiorari and the one we decide today.

II

In response to mounting concern about the number and severity of railroad employees' injuries, Congress in 1908 enacted FELA to provide a compensation scheme for railroad workplace injuries, pre-empting state tort remedies. *Second Employers' Liability Cases*, 223 U. S. 1, 53–55 (1912). Unlike a typical workers' compensation scheme, which provides relief without regard to fault, Section 1 of FELA provides a statutory cause of action sounding in negligence:

> "[E]very common carrier by railroad . . . shall be liable in damages to any person suffering injury while he is employed by such carrier . . . for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier . . . ." 45 U. S. C. §51.

FELA provides for concurrent jurisdiction of the state and federal courts, §56, although substantively FELA actions are governed by federal law. *Chesapeake & Ohio R. Co.* v. *Stapleton*, 279 U. S. 587, 590 (1929). Absent express lan-

guage to the contrary, the elements of a FELA claim are determined by reference to the common law. *Urie* v. *Thompson*, 337 U. S. 163, 182 (1949). One notable deviation from the common law is the abolition of the railroad's common-law defenses of assumption of the risk, § 54; *Tiller* v. *Atlantic Coast Line R. Co.*, 318 U. S. 54, 58 (1943), and, at issue in this case, contributory negligence, § 53.

At common law, of course, a plaintiff's contributory negligence operated as an absolute bar to relief. W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 65, pp. 461–462 (5th ed. 1984) (hereinafter Prosser & Keeton); 1 D. Dobbs, Law of Torts § 199, p. 494 (2001) (hereinafter Dobbs). Under Section 3 of FELA, however, an employee's negligence does not bar relief but instead diminishes recovery in proportion to his fault:

> "In all actions [under FELA], the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee . . . ." 45 U. S. C. § 53.

Both parties agree that at common law the causation standards for negligence and contributory negligence were the same. Brief for Respondent 40–41; Tr. of Oral Arg. 46–48. As explained in the Second Restatement of Torts:

> "The rules which determine the causal relation between the plaintiff's negligent conduct and the harm resulting to him are the same as those determining the causal relation between the defendant's negligent conduct and resulting harm to others." § 465(2), p. 510 (1964).

See also Prosser & Keeton § 65, at 456; Dobbs § 199, at 497 ("The same rules of proximate cause that apply on the issue of negligence also apply on the issue of contributory negligence" (footnote omitted)). This was the prevailing view when FELA was enacted in 1908. See 1 T. Shearman & A.

Redfield, Law of Negligence § 94, pp. 143–144 (5th ed. 1898) ("The plaintiff's fault . . . must be a proximate cause, in the same sense in which the defendant's negligence must have been a proximate cause in order to give any right of action").

Missouri's practice of applying different causation standards in FELA actions is apparently unique. Norfolk claims that Missouri is the only jurisdiction to allow such a disparity, and Sorrell has not identified another.[2] It is of course

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[2] A review of model and pattern jury instructions in FELA actions reveals a variety of approaches. Some jurisdictions recommend using the "in whole or in part" or "in any part" formulation for both railroad negligence and plaintiff contributory negligence, by using the same language in the respective pattern instructions, including a third instruction that the same causation standard is applied to both parties, or including in commentary an admonition to that effect. See, *e. g.*, 5 L. Sand, J. Siffert, W. Loughlin, S. Reiss, & N. Batterman, Modern Federal Jury Instr.—Civil ¶¶ 89.02–89.03, pp. 89–7, 89–44, 89–53 (3d ed. 2006); 4 Fla. Forms of Jury Instr. §§ 161.02, 161.47, 161.60 (2006); Cal. Jury Instr., Civ., Nos. 11.07, 11.14, and Comment (2005); 3 Ill. Forms of Jury Instr. §§ 91.02[1], 91.50[1] (2005); 3 N. M. Rules Ann., Uniform Jury Instr., Civ., Nos. 13–905, 13–909, 13–915 (2004); Model Utah Jury Instr., Civ., Nos. 14.4, 14.7, 14.8 (1993); Manual of Model Civil Jury Instr. for the District Courts of the Eighth Circuit § 7.03, and n. 7 (2005); Eleventh Circuit Pattern Jury Instr. (Civil Cases) § 7.1 (2005). Other jurisdictions use the statutory formulation ("in whole or in part") for railroad negligence, and do not contain a pattern instruction for contributory negligence. See, *e. g.*, Mich. Non-Standard Jury Instr., Civ., § 12:53 (Supp. 2006). Both Alabama and Virginia use formulations containing language of both proximate cause and in whole or in part. 1 Ala. Pattern Jury Instr., Civ., Nos. 17.01, 17.05 (2d ed. 1993) (railroad negligence "proximately caused, in whole or in part"; plaintiff contributory negligence "proximately contributed to cause"); 1 Va. Jury Instr. §§ 40.01, 40.02 (3d ed. 1998) (railroad negligence "in whole or in part was the proximate cause of or proximately contributed to cause"; plaintiff negligence "contributed to cause"). In New York, the pattern instructions provide that railroad causation is measured by whether the injury results "in whole or in part" from the railroad's negligence, and a plaintiff's contributory negligence diminishes recovery if it "contributed to caus[e]" the injury. 1B N. Y. Pattern Jury Instr., Civ., No. 2:180 (3d ed. 2006). Montana provides only a general FELA causation instruction. Mont. Pattern Instr., Civ., No. 6.05 (1997) ("[A]n act or a failure to act is the

possible that everyone is out of step except Missouri, but we find no basis for concluding that Congress in FELA meant to allow disparate causation standards.

We have explained that "although common-law principles are not necessarily dispositive of questions arising under FELA, unless they are expressly rejected in the text of the statute, they are entitled to great weight in our analysis." *Gottshall*, 512 U. S., at 544. In *Gottshall* we "cataloged" the ways in which FELA expressly departed from the common law: It abolished the fellow servant rule, rejected contributory negligence in favor of comparative negligence, prohibited employers from contracting around the Act, and abolished the assumption of risk defense. *Norfolk & Western R. Co.* v. *Ayers*, 538 U. S. 135, 145 (2003); *Gottshall*, *supra*, at 542–543. The fact that the common law applied the same causation standard to defendant and plaintiff negligence, and FELA did not expressly depart from that approach, is strong evidence against Missouri's disparate standards. See also *Monessen Southwestern R. Co.* v. *Morgan*, 486 U. S. 330, 337–338 (1988) (holding that, because FELA abrogated some common-law rules explicitly but did not address "the equally well-established doctrine barring the recovery of prejudgment interest, . . . we are unpersuaded that Congress intended to abrogate that doctrine *sub silentio*").

Departing from the common-law practice of applying a single standard of causation for negligence and contributory

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cause of an injury if it plays a part, no matter how small, in bringing about the injury"). Kansas has codified instructions similar to Missouri's, Kan. Pattern Instr. 3d, Civ., No. 132.01 (2005) (railroad liable when injury "results in whole or in part" from railroad's negligence); *id.*, No. 132.20 (contributory negligence is negligence on the part of the plaintiff that "contributes as a direct cause" of the injury), but the commentary to these instructions cites cases and instructions applying a single standard, *id.*, No. 132.01, and Comment, and in practice the Kansas courts have used the language of in whole or in part for both parties' negligence, see *Merando* v. *Atchison, T. & S. F. R. Co.*, 232 Kan. 404, 406–409, 656 P. 2d 154, 157–158 (1982).

negligence would have been a peculiar approach for Congress to take in FELA. As one court explained, under FELA,

> "[a]s to both attack or defense, there are two common elements, (1) negligence, i. e., the standard of care, and (2) causation, i. e., the relation of the negligence to the injury. So far as negligence is concerned, that standard is the same—ordinary prudence—for both Employee and Railroad alike. Unless a contrary result is imperative, it is, at best, unfortunate if two standards of causation are used." *Page*, 349 F. 2d, at 823.

As a practical matter, it is difficult to reduce damages "in proportion" to the employee's negligence if the relevance of each party's negligence to the injury is measured by a different standard of causation. Norfolk argues, persuasively we think, that it is far simpler for a jury to conduct the apportionment FELA mandates if the jury compares like with like—apples to apples.

Other courts to address this question concur. See *Fashauer* v. *New Jersey Transit Rail Operations, Inc.*, 57 F. 3d 1269, 1282–1283 (CA3 1995); *Caplinger* v. *Northern Pacific Terminal*, 244 Ore. 289, 290–292, 418 P. 2d 34, 35–36 (1966); *Page*, *supra*, at 822–823; *Ganotis*, 342 F. 2d, at 768–769.[3] The most thoughtful treatment comes in *Page*, in which the Fifth Circuit stated: "[W]e think that from the

[3] See also *Bunting* v. *Sun Co., Inc.*, 434 Pa. Super. 404, 409–411, 643 A. 2d 1085, 1088 (1994); *Hickox* v. *Seaboard System R. Co.*, 183 Ga. App. 330, 331–332, 358 S. E. 2d 889, 891–892 (1987). An exception is a Texas case that no court has since cited for the proposition, *Missouri-Kansas-Texas R. Co.* v. *Shelton*, 383 S. W. 2d 842, 844–846 (Civ. App. 1964), and that the Texas model jury instructions, which instruct the jury to determine plaintiff or railroad negligence using a single "in whole or in part" causation standard, at least implicitly disavow. See 10 West's Texas Forms: Civil Trial and Appellate Practice §23.34, p. 27 (3d ed. 2000) ("Did the negligence, if any, of the [plaintiff or railroad] cause, in whole or in part, the occurrence in question?").

very nature of comparative negligence, the standard of causation should be single. . . . Use of the terms 'in proportion to' and 'negligence attributable to' the injured worker inescapably calls for a comparison. . . . [I]t is obvious that for a system of comparative fault to work, the basis of comparison has to be the same." 349 F. 2d, at 824. See also Restatement (Third) of Torts: Apportionment of Liability § 3, Reporters' Note, p. 37, Comment *a* (1999) ("[C]omparative responsibility is difficult to administer when different rules govern different parts of the same lawsuit"). We appreciate that there may well be reason to "doubt that such casuistries have any practical significance [for] the jury," *Page*, *supra*, at 823, but it seems to us that Missouri's idiosyncratic approach of applying different standards of causation unduly muddies what may, to a jury, be already murky waters.

Sorrell argues that FELA does contain an explicit statutory alteration from the common-law rule: Section 1 of FELA—addressing railroad negligence—uses the language "in whole or in part," 45 U. S. C. § 51, while Section 3—covering employee contributory negligence—does not, § 53. This, Sorrell contends, evinces an intent to depart from the common-law causation standard with respect to railroad negligence under Section 1, but not with respect to any employee contributory negligence under Section 3.

The inclusion of this language in one section and not the other does not alone justify a departure from the common-law practice of applying a single standard of causation. It would have made little sense to include the "in whole or in part" language in Section 3, because if the employee's contributory negligence contributed "in whole" to his injury, there would be no recovery against the railroad in the first place. The language made sense in Section 1, however, to make clear that there could be recovery against the railroad even if it were only partially negligent.

Even if the language in Section 1 is understood to address the standard of causation, and not simply to reflect the fact

that contributory negligence is no longer a complete bar to recovery, there is no reason to read the statute as a whole to encompass different causation standards. Section 3 simply does not address causation. On the question whether a different standard of causation applies as between the two parties, the statutory text is silent.

Finally, in urging that a higher standard of causation for plaintiff contributory negligence is acceptable, Sorrell invokes FELA's remedial purpose and our history of liberal construction. We are not persuaded. FELA was indeed enacted to benefit railroad employees, as the express abrogation of such common-law defenses as assumption of risk, the contributory negligence bar, and the fellow servant rule make clear. See *Ayers*, 538 U. S., at 145. It does not follow, however, that this remedial purpose requires us to interpret every uncertainty in the Act in favor of employees. See *Rodriguez* v. *United States*, 480 U. S. 522, 526 (1987) *(per curiam)* ("[I]t frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law"). FELA's text does not support the proposition that Congress meant to take the unusual step of applying different causation standards in a comparative negligence regime, and the statute's remedial purpose cannot compensate for the lack of a statutory basis.

We conclude that FELA does not abrogate the common-law approach, and that the same standard of causation applies to railroad negligence under Section 1 as to plaintiff contributory negligence under Section 3. Sorrell does not dispute that Missouri applies different standards, see Brief for Respondent 40–41; see also Mo. Approved Jury Instr., Civ., No. 24.01, Committee's Comment (1978 new), and accordingly we vacate the judgment below and remand the case for further proceedings.

The question presented in this case is a narrow one, and we see no need to do more than answer that question in

today's decision. As a review of FELA model instructions indicates, n. 2, *supra*, there are a variety of ways to instruct a jury to apply the same causation standard to railroad negligence and employee contributory negligence. Missouri has the same flexibility as the other States in deciding how to do so, so long as it now joins them in applying a single standard.

Sorrell maintains that even if the instructions improperly contained different causation standards we should nonetheless affirm because any error was harmless. He argues that the evidence of his negligence presented at trial, if credited by the jury, could only have been a "direct" cause, so that even with revised instructions the result would not change. This argument is better addressed by the Missouri Court of Appeals, and we leave it to that court on remand to determine whether a new trial is required in this case.

The judgment of the Missouri Court of Appeals is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE SOUTER, with whom JUSTICE SCALIA and JUSTICE ALITO join, concurring.

I agree that the same standard of causal connection controls the recognition of both a defendant-employer's negligence and a plaintiff-employee's contributory negligence in Federal Employers' Liability Act (FELA) suits, and I share the Court's caution in remanding for the Missouri Court of Appeals to determine in the first instance just what that common causal relationship must be, if it should turn out that the difference in possible standards would affect judgment on the verdict in this case. The litigation in the Missouri courts did not focus on the issue of what the shared standard should be, and the submissions in this Court did not explore the matter comprehensively.

The briefs and arguments here did, however, adequately address the case of ours with which exploration will begin,

and I think it is fair to say a word about the holding in *Rogers* v. *Missouri Pacific R. Co.*, 352 U. S. 500 (1957). Despite some courts' views to the contrary,* *Rogers* did not address, much less alter, existing law governing the degree of causation necessary for redressing negligence as the cause of negligently inflicted harm; the case merely instructed courts how to proceed when there are multiple cognizable causes of an injury.

Prior to FELA, it was clear common law that a plaintiff had to prove that a defendant's negligence caused his injury proximately, not indirectly or remotely. See, *e. g.*, 3 J. Lawson, Rights, Remedies, and Practice 1740 (1890) ("Natural,

*Recently, some courts have taken the view that *Rogers* smuggled proximate cause out of the concept of defendant liability under FELA. See, *e. g.*, *Holbrook* v. *Norfolk Southern R. Co.*, 414 F. 3d 739, 741–742 (CA7 2005) (concluding that "a plaintiff's burden when suing under the FELA is significantly lighter than in an ordinary negligence case" because "a railroad will be held liable where 'employer negligence played any part, even the slightest, in producing the injury' " (quoting *Rogers*, 352 U. S., at 506)); *Summers* v. *Missouri Pacific R. Co.*, 132 F. 3d 599, 606–607 (CA10 1997) (holding that, in *Rogers*, the Supreme Court "definitively abandoned" the requirement of proximate cause in FELA suits); *Oglesby* v. *Southern Pacific Transp. Co.*, 6 F. 3d 603, 606–609 (CA9 1993) (same). But several State Supreme Courts have explicitly or implicitly espoused the opposite view. See *Marazzato* v. *Burlington No. R. Co.*, 249 Mont. 487, 490–491, 817 P. 2d 672, 674–675 (1991) (*Rogers* addressed multiple causation only, leaving FELA plaintiffs with "the burden of proving that defendant's negligence was the proximate cause in whole or in part of plaintiff's [death]" (alteration in original)); see also *Gardner* v. *CSX Transp., Inc.*, 201 W. Va. 490, 500, 498 S. E. 2d 473, 483 (1997) ("[T]o prevail on a claim under [FELA], a plaintiff employee must establish that the defendant employer acted negligently and that such negligence contributed proximately, in whole or in part, to plaintiff's injury"); *Snipes* v. *Chicago Central & Pacific R. Co.*, 484 N. W. 2d 162, 164 (Iowa 1992) ("Recovery under the FELA requires an injured employee to prove that the defendant employer was negligent and that the negligence proximately caused, in whole or in part, the accident"); *Chapman* v. *Union Pacific R. Co.*, 237 Neb. 617, 627, 467 N. W. 2d 388, 395 (1991) ("To recover under [FELA], an employee must prove the employer's negligence and that the alleged negligence is a proximate cause of the employee's injury").

proximate, and legal results are all that damages can be recovered for, even under a statute entitling one 'to recover *any* damage' "); T. Cooley, Law of Torts 73 (2d ed. 1888) (same). Defendants were held to the same standard: under the law of that day, a plaintiff's contributory negligence was an absolute bar to his recovery if, but only if, it was a proximate cause of his harm. See *Grand Trunk R. Co.* v. *Ives*, 144 U. S. 408, 429 (1892).

FELA changed some rules but, as we have said more than once, when Congress abrogated common law rules in FELA, it did so expressly. *Norfolk & Western R. Co.* v. *Ayers*, 538 U. S. 135, 145 (2003); *Consolidated Rail Corporation* v. *Gottshall*, 512 U. S. 532, 544 (1994); see also *Second Employers' Liability Cases*, 223 U. S. 1, 49–50 (1912) (cataloguing FELA's departures from the common law). Among FELA's explicit common law targets, the rule of contributory negligence as a categorical bar to a plaintiff's recovery was dropped and replaced with a comparative negligence regime. 45 U. S. C. § 53; see *Grand Trunk Western R. Co.* v. *Lindsay*, 233 U. S. 42, 49 (1914). FELA said nothing, however, about the familiar proximate-cause standard for claims either of a defendant-employer's negligence or a plaintiff-employee's contributory negligence, and throughout the half-century between FELA's enactment and the decision in *Rogers*, we consistently recognized and applied proximate cause as the proper standard in FELA suits. See, *e. g.*, *Tennant* v. *Peoria & Pekin Union R. Co.*, 321 U. S. 29, 32 (1944) (FELA plaintiff must prove that "negligence was the proximate cause in whole or in part" of his injury); see also *Urie* v. *Thompson*, 337 U. S. 163, 195 (1949) (recognizing proximate cause as the appropriate standard in FELA suits); *St. Louis-San Francisco R. Co.* v. *Mills*, 271 U. S. 344 (1926) (judgment as a matter of law owing to FELA plaintiff's failure to prove proximate cause).

Rogers left this law where it was. We granted certiorari in *Rogers* to establish the test for submitting a case to a jury

when the evidence would permit a finding that an injury had multiple causes. 352 U. S., at 501, 506. We rejected Missouri's "language of proximate causation which ma[de] a jury question [about a defendant's liability] dependent upon whether the jury may find that the defendant's negligence was the sole, efficient, producing cause of injury." *Id.*, at 506. The notion that proximate cause must be exclusive proximate cause undermined Congress's chosen scheme of comparative negligence by effectively reviving the old rule of contributory negligence as barring any relief, and we held that a FELA plaintiff may recover even when the defendant's action was a partial cause of injury but not the sole one. Recovery under the statute is possible, we said, even when an employer's contribution to injury was slight in relation to all other legally cognizable causes.

True, I would have to stipulate that clarity was not well served by the statement in *Rogers* that a case must go to a jury where "the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought." *Ibid.* But that statement did not address and should not be read as affecting the necessary directness of cognizable causation, as distinct from the occasional multiplicity of causations. It spoke to apportioning liability among parties, each of whom was understood to have had some hand in causing damage directly enough to be what the law traditionally called a proximate cause.

The absence of any intent to water down the common law requirement of proximate cause is evident from the prior cases on which *Rogers* relied. To begin with, the "any part, even the slightest," excerpt of the opinion (cited by respondent in arguing that *Rogers* created a more "relaxed" standard of causation than proximate cause) itself cited *Coray* v. *Southern Pacific Co.*, 335 U. S. 520 (1949). See *Rogers*, *supra*, at 506, n. 11. There, just eight years before *Rogers*, Justice Black unambiguously recognized proximate cause as

the standard applicable in FELA suits. 335 U. S., at 523 ("[P]etitioner was entitled to recover if this defective equipment was the sole or a contributory proximate cause of the decedent employee's death"). Second, the *Rogers* Court's discussion of causation under "safety-appliance statutes" contained a cross-reference to *Coray* and a citation to *Carter* v. *Atlanta & St. Andrews Bay R. Co.*, 338 U. S. 430 (1949), a case which likewise held there was liability only if "the jury determines that the defendant's breach is a 'contributory proximate cause' of injury," *id.*, at 435. *Rogers*, *supra*, at 507, n. 13.

If more were needed to confirm the limited scope of what *Rogers* held, the Court's quotation of the Missouri trial court's jury charge in that case would supply it, for the instructions covered the requirement to show proximate cause connecting negligence and harm, a point free of controversy:

> "'[I]f you further find that the plaintiff . . . did not exercise ordinary care for his own safety and was guilty of negligence and that such negligence, if any[,] was the sole proximate cause of his injuries, if any, and that such alleged injuries, if any, were not directly contributed to or caused by any negligence of the defendant . . . then, in that event, the plaintiff is not entitled to recover against the defendant, and you will find your verdict in favor of the defendant.'" 352 U. S., at 505, n. 9.

Thus, the trial judge spoke of "proximate cause" by plaintiff's own negligence, and for defendant's negligence used the familiar term of art for proximate cause, in referring to a showing that the defendant "directly contributed to or caused" the plaintiff's injuries. We took no issue with the trial court's instruction in this respect, but addressed the significance of multiple causations, as explained above.

Whether FELA is properly read today as requiring proof of proximate causation before recognizing negligence is up to the Missouri Court of Appeals to determine in the first

instance, if necessary for the resolution of this case on remand. If the state court decides to take on that issue, it will necessarily deal with *Rogers*, which in my judgment is no authority for anything less than proximate causation in an action under FELA. The state court may likewise need to address post-*Rogers* cases (including some of our own); I do not mean to suggest any view of them except for the misreading of *Rogers* expressed here and there.

JUSTICE GINSBURG, concurring in the judgment.

The Court today holds simply and only that in cases under the Federal Employers' Liability Act (FELA), railroad negligence and employee contributory negligence are governed by the same causation standard. I concur in that judgment. It should be recalled, however, that the Court has several times stated what a plaintiff must prove to warrant submission of a FELA case to a jury. That question is long settled, we have no cause to reexamine it, and I do not read the Court's decision to cast a shadow of doubt on the matter.

In *Consolidated Rail Corporation* v. *Gottshall*, 512 U. S. 532, 543 (1994), we acknowledged that "a relaxed standard of causation applies under FELA." Decades earlier, in *Crane* v. *Cedar Rapids & Iowa City R. Co.*, 395 U. S. 164 (1969), we said that a FELA plaintiff need prove "only that his injury resulted in whole or in part from the railroad's violation." *Id.*, at 166 (internal quotation marks omitted). Both decisions referred to the Court's oft-cited opinion in *Rogers* v. *Missouri Pacific R. Co.*, 352 U. S. 500 (1957), which declared: "Under [FELA] the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, *even the slightest*, in producing the injury or death for which damages are sought." *Id.*, at 506 (emphasis added). *Rogers*, in turn, drew upon *Coray* v. *Southern Pacific Co.*, 335 U. S. 520, 524 (1949), in which the Court observed: "Congress . . . imposed extraordinary safety obligations upon railroads and has commanded that if a

breach of these obligations contributes in part to an employee's death, the railroad must pay damages."

These decisions answer the question Norfolk sought to "smuggle . . . into" this case, see *ante*, at 164 (majority opinion), *i. e.*, what is the proper standard of causation for railroad negligence under FELA. Today's opinion leaves in place precedent solidly establishing that the causation standard in FELA actions is more "relaxed" than in tort litigation generally.

A few further points bear emphasis. First, it is sometimes said that *Rogers* eliminated proximate cause in FELA actions. See, *e. g.*, *Crane*, 395 U. S., at 166 (A FELA plaintiff "is not required to prove common-law proximate causation."); *Summers* v. *Missouri Pacific R. Co.*, 132 F. 3d 599, 606 (CA10 1997) ("During the first half of this century, it was customary for courts to analyze liability under . . . FELA in terms of proximate causation. However, the Supreme Court definitively abandoned this approach in *Rogers*." (citation omitted)); *Oglesby* v. *Southern Pacific Transp. Co.*, 6 F. 3d 603, 609 (CA9 1993) ("[Our] holding is consistent with the case law of several other circuits which have found [that] 'proximate cause' is not required to establish causation under the FELA."). It would be more accurate, as I see it, to recognize that *Rogers* describes the test for proximate causation applicable in FELA suits. That test is whether "employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought." 352 U. S., at 506.

Whether a defendant's negligence is a proximate cause of the plaintiff's injury entails a judgment, at least in part policy based, as to how far down the chain of consequences a defendant should be held responsible for its wrongdoing. See *Palsgraf* v. *Long Island R. Co.*, 248 N. Y. 339, 352, 162 N. E. 99, 103 (1928) (Andrews, J., dissenting) ("What we do mean by the word 'proximate' is, that because of convenience, of public policy, of a rough sense of justice, the law

arbitrarily declines to trace a series of events beyond a certain point."). In FELA cases, strong policy considerations inform the causation calculus.

FELA was prompted by concerns about the welfare of railroad workers. "Cognizant of the physical dangers of railroading that resulted in the death or maiming of thousands of workers every year," and dissatisfied with the tort remedies available under state common law, "Congress crafted a federal remedy that shifted part of the human overhead of doing business from employees to their employers." *Gottshall*, 512 U. S., at 542 (internal quotation marks omitted); see also *Wilkerson* v. *McCarthy*, 336 U. S. 53, 68 (1949) (Douglas, J., concurring) (FELA "was designed to put on the railroad industry some of the cost for the legs, eyes, arms, and lives which it consumed in its operations."). "We have liberally construed FELA to further Congress' remedial goal." *Gottshall*, 512 U. S., at 543. With the motivation for FELA center stage in *Rogers*, we held that a FELA plaintiff can get to a jury if he can show that his employer's negligence was even the slightest cause of his injury.

The "slightest" cause sounds far less exacting than "proximate" cause, which may account for the statements in judicial opinions that *Rogers* dispensed with proximate cause for FELA actions. These statements seem to me reflective of pervasive confusion engendered by the term "proximate cause." As Prosser and Keeton explains:

> "The word 'proximate' is a legacy of Lord Chancellor Bacon, who in his time committed other sins. The word means nothing more than near or immediate; and when it was first taken up by the courts it had connotations of proximity in time and space which have long since disappeared. It is an unfortunate word, which places an entirely wrong emphasis upon the factor of physical or mechanical closeness. For this reason 'legal cause' or perhaps even 'responsible cause' would be a more appropriate term." W. Keeton, D. Dobbs, R. Keeton, & D.

> Owen, Prosser and Keeton on Law of Torts § 42, p. 273 (5th ed. 1984) (footnotes omitted).

If we take up Prosser and Keeton's suggestion to substitute "legal cause" for "proximate cause," we can state more clearly what *Rogers* held: Whenever a railroad's negligence is the slightest cause of the plaintiff's injury, it is a legal cause, for which the railroad is properly held responsible.[1]

If the term "proximate cause" is confounding to jurists, it is even more bewildering to jurors. Nothing in today's opinion should encourage courts to use "proximate cause," or any term like it, in jury instructions. "[L]egal concepts such as 'proximate cause' and 'foreseeability' are best left to arguments between attorneys for consideration by judges or justices; they are not terms which are properly submitted to a lay jury, and when submitted can only serve to confuse jurors and distract them from deciding cases based on their merits." *Busta* v. *Columbus Hospital Corp.*, 276 Mont. 342, 371, 916 P. 2d 122, 139 (1996). Accord *Mitchell* v. *Gonzales*, 54 Cal. 3d 1041, 1050, 819 P. 2d 872, 877 (1991) ("It is reasonably likely that when jurors hear the term 'proximate cause' they may misunderstand its meaning.").[2]

Sound jury instructions in FELA cases would resemble the model federal charges cited in the Court's opinion. *Ante*, at 167–168, n. 2. As to railroad negligence, the relevant instruction tells the jury:

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[1] I do not read JUSTICE SOUTER's concurring opinion as taking a position on the appropriate causation standard as expressed in *Consolidated Rail Corporation* v. *Gottshall*, 512 U. S. 532 (1994), and *Crane* v. *Cedar Rapids & Iowa City R. Co.*, 395 U. S. 164 (1969). See *supra*, at 177–178.

[2] See also Stapleton, Legal Cause: Cause-in-Fact and the Scope of Liability for Consequences, 54 Vand. L. Rev. 941, 987 (2001) ("[T]he inadequacy and vagueness of jury instructions on 'proximate cause' is notorious."); Cork, A Better Orientation for Jury Instructions, 54 Mercer L. Rev. 1, 53–54 (2002) (criticizing Georgia's jury instruction on proximate cause as incomprehensible); Steele & Thornburg, Jury Instructions: A Persistent Failure to Communicate, 67 N. C. L. Rev. 77 (1988) (demonstrating juror confusion about proximate-cause instructions).

> "The fourth element [of a FELA action] is whether an injury to the plaintiff resulted in whole or in part from the negligence of the railroad or its employees or agents. In other words, did such negligence play any part, even the slightest, in bringing about an injury to the plaintiff?" 5 L. Sand, J. Siffert, W. Loughlin, S. Reiss, & N. Batterman, Modern Federal Jury Instructions—Civil ¶ 89.02, p. 89–44 (3d ed. 2006).

Regarding contributory negligence, the relevant instruction reads:

> "To determine whether the plaintiff was 'contributorily negligent,' you . . . apply the same rule of causation, that is, did the plaintiff's negligence, if any, play any part in bringing about his injuries." *Id.*, ¶ 89.03, p. 89–53.

Both instructions direct jurors in plain terms that they can be expected to understand.

Finally, as the Court notes, *ante*, at 172, on remand, the Missouri Court of Appeals will determine whether a new trial is required in this case, owing to the failure of the trial judge properly to align the charges on negligence and contributory negligence. The trial court instructed the jury to find Norfolk liable if the railroad's negligence "resulted in whole or in part in injury to plaintiff." App. 14. In contrast, the court told the jury to find Sorrell contributorily negligent only if he engaged in negligent conduct that "*directly* contributed to cause his injury." *Id.*, at 15 (emphasis added). At trial, Norfolk sought a different contributory negligence instruction. Its proposed charge would have informed the jury that Sorrell could be held responsible, at least in part, if his own negligence "contributed in whole or in part to cause his injury." *Id.*, at 11.

Norfolk's proposal was superior to the contributory negligence instruction in fact delivered by the trial court, for the

railroad's phrasing did not use the word "directly."[3] As Sorrell points out, however, the instructional error was almost certainly harmless. Norfolk alleged that Sorrell drove his truck negligently, causing it to flip on its side. Under the facts of this case, it is difficult to imagine that a jury could find Sorrell negligent in a manner that contributed to his injury, but only indirectly.

Norfolk urged in this Court, belatedly and unsuccessfully, that the charge on negligence was erroneous and should have been revised to conform to the charge in fact delivered on contributory negligence. See *ante*, at 163. That argument cannot be reconciled with our precedent. See *supra*, at 177–178. Even if it could, it would be unavailing in the circumstances here presented. Again, there is little likelihood that a jury could find that Norfolk's negligence contributed to Sorrell's injury, but only indirectly.

* * *

With the above-described qualifications, I concur in the Court's judgment.

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[3] Norfolk's proposed instruction was, nevertheless, imperfect. As the Court notes, if the employee's negligence "contributed 'in whole' to his injury, there would be no recovery against the railroad in the first place." *Ante*, at 170.

Syllabus

GONZALES, ATTORNEY GENERAL *v.* DUENAS-ALVAREZ

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 05–1629. Argued December 5, 2006—Decided January 17, 2007

Respondent, a permanent resident alien, was convicted of violating Cal. Veh. Code Ann. § 10851(a), under which "[a]ny person who drives or takes a vehicle not his or her own, without the consent of the owner . . . , or *any person who is a party or an accessory to or an accomplice in* the driving or unauthorized taking or stealing, *is guilty* of a public offense." (Emphasis added.) The Federal Government then sought to remove respondent from the United States as an alien convicted of "a theft offense . . . for which the term of imprisonment [is] at least one year," 8 U. S. C. § 1101(a)(43)(G); § 1227(a)(2)(A). The Government claimed that the California conviction qualified as such a "theft offense" under the framework set forth in *Taylor* v. *United States*, 495 U. S. 575. In *Taylor*, the Court considered whether a prior conviction for violating a state statute criminalizing certain burglary-like behavior fell within the term "burglary" for sentence-enhancement purposes under 18 U. S. C. § 924(e). This Court held that Congress meant that term to refer to "burglary" in "the generic sense in which the term is now used in the criminal codes of most States," 495 U. S., at 598; and that a sentencing court seeking to determine whether a particular prior conviction was for generic burglary should normally look to the state statute defining the crime of conviction, not to the facts of the particular prior case, *id.*, at 599–600; but that where state law defines burglary broadly to include crimes falling outside generic "burglary," the sentencer should "go beyond the mere fact of conviction" and examine, *e. g.*, the charging document and jury instructions to determine whether the earlier "jury was actually required to find all the elements of generic burglary," *id.*, at 602. The Federal Immigration Judge and the Board of Immigration Appeals (BIA) found respondent removable, but the Ninth Circuit summarily remanded in light of its earlier *Penuliar* decision holding that "aiding and abetting" a theft is not itself a crime under the generic definition of theft.

Held: The term "theft offense" in 8 U. S. C. § 1101(a)(43)(G) includes the crime of "aiding and abetting" a theft offense. Pp. 189–194.

(a) One who aids or abets a theft, like a principal who actually participates, commits a crime that falls within the scope of the generic theft

definition accepted by the BIA and the Ninth and other Circuits: the "taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership, even if such deprivation is less than total or permanent." *Penuliar* v. *Gonzales*, 435 F. 3d 961, 969. Since, as the record shows, state and federal criminal law now uniformly treats principals and aiders and abettors alike, "the generic sense in which" the term "theft" "is now used in the criminal codes of most States," *Taylor*, *supra*, at 598, covers such "aiders and abettors" as well as principals. And the criminal activities of these aiders and abettors of a generic theft thus fall within the scope of the term "theft" in the federal statute. Pp. 189–190.

(b) The Court rejects respondent's argument that Cal. Veh. Code Ann. § 10851, through the California courts' application of a "natural and probable consequences" doctrine, creates a subspecies of the crime falling outside the generic "theft" definition. The fact that, under California law, an aider and abettor is criminally responsible not only for the crime he intends, but also for any crime that naturally and probably results from his intended crime, does not in itself show that the state statute covers a nongeneric theft crime. Relatively few jurisdictions have expressly rejected the "natural and probable consequences" doctrine, and many States and the Federal Government apply some form or variation of that doctrine or permit jury inferences of intent in circumstances similar to those in which California has applied the doctrine. To succeed, respondent must show something *special* about California's version of the doctrine. His attempt to show that, unlike most other States, California makes a defendant criminally liable for conduct he did not intend, not even as a known or almost certain byproduct of his intentional acts, fails because the California cases respondent cites do not show that California's law is applied in such a way that is somehow broader in scope than other States' laws. Moreover, to find that state law creates a crime outside the generic definition of a listed crime in a federal statute requires a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct falling outside the generic definition. To make that showing, an offender must at least point to his own case or other cases in which the state courts in fact did apply the statute in the special (nongeneric) manner for which he argues. Respondent makes no such showing. Pp. 190–194.

(c) Respondent's additional claims—that § 10851 (1) holds liable accessories after the fact, who need not be shown to have committed a theft, and (2) applies to joyriding, which falls outside the generic "theft" definition—are not considered here because they do not fall within the terms of the question presented, the lower court did not consider them, and this Court declines to reach them in the first instance. P. 194.

176 Fed. Appx. 820, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, SOUTER, THOMAS, GINSBURG, and ALITO, JJ., joined, and in which STEVENS, J., joined, as to Parts I, II, and III–B. STEVENS, J., filed an opinion concurring in part and dissenting in part, *post*, p. 198.

Dan Himmelfarb argued the cause for petitioner. With him on the briefs were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Kneedler*, and *Donald E. Keener*.

Christopher J. Meade argued the cause and filed a brief for respondent.*

JUSTICE BREYER delivered the opinion of the Court.

Immigration law provides for removal from the United States of an alien convicted of "a *theft offense* (including receipt of stolen property) . . . for which the term of imprisonment [is] at least one year." 8 U. S. C. § 1101(a)(43)(G) (emphasis added; footnote omitted); § 1227(a)(2)(A). The question here is whether the term "theft offense" in this federal statute includes the crime of "*aiding and abetting*" a theft offense. We hold that it does. And we vacate a Ninth Circuit determination to the contrary.

I

The Immigration and Nationality Act, 66 Stat. 163, as amended, 8 U. S. C. § 1101 *et seq.* (2000 ed. and Supp. IV), lists a set of offenses, conviction for any one of which subjects certain aliens to removal from the United States, § 1227(a). In determining whether a conviction (say, a conviction for violating a state criminal law that forbids the taking of property without permission) falls within the scope of

*Briefs of *amici curiae* urging affirmance were filed for the California Public Defenders Association by *Jeremy Maltby*; and for the National Immigration Project of the National Lawyers Guild by *Charles A. Rothfeld*, *Andrew J. Pincus*, and *Giovanna Shay*.

Meir Feder and *Samuel Estreicher* filed a brief for Professors of Criminal Law as *amici curiae*.

a listed offense (*e. g.*, "theft offense"), the lower courts uniformly have applied the approach this Court set forth in *Taylor* v. *United States*, 495 U. S. 575 (1990). *E. g.*, *Soliman* v. *Gonzales*, 419 F. 3d 276, 284 (CA4 2005); *Abimbola* v. *Ashcroft*, 378 F. 3d 173, 176–177 (CA2 2004); *Huerta-Guevara* v. *Ashcroft*, 321 F. 3d 883, 886–888 (CA9 2003); *Hernandez-Mancilla* v. *INS*, 246 F. 3d 1002, 1008–1009 (CA7 2001).

Taylor concerned offenses listed in the federal Armed Career Criminal Act, 18 U. S. C. § 924(e) (2000 ed. and Supp. IV). That Act mandates a lengthy prison sentence for offenders with previous convictions for, *e. g.*, a "violent felony"; and the Act sets forth certain specific crimes, *e. g.*, "burglary," included in this category. The Court, in *Taylor*, considered whether a conviction for violating a state statute criminalizing certain burglary-like behavior fell within the listed federal term "burglary." 495 U. S., at 589, 598.

The Court held that Congress meant its listed term "burglary" to refer to a specific crime, *i. e.*, "'burglary'" in "*the generic sense in which the term is now used in the criminal codes of most States.*" *Id.*, at 598 (emphasis added). The Court also held that a state conviction qualifies as a burglary conviction, "regardless of" the "exact [state] definition or label" as long as it has the "basic elements" of "generic" burglary, namely, "unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Id.*, at 599. The Court added that, when a sentencing court seeks to determine whether a particular prior conviction was for a generic burglary offense, it should normally look not to the facts of the particular prior case, but rather to the state statute defining the crime of conviction. *Id.*, at 599–600.

The Court further noted that a "few States' burglary statutes" "define burglary more broadly" to include both a (generically defined) listed crime and also one or more nonlisted crimes. *Id.*, at 599. For example, Massachusetts defines "burglary" as including not only breaking into "'a building'"

but also breaking into a "vehicle" (which falls outside the generic definition of "burglary," for a car is not a " 'building or structure' "). See *Shepard* v. *United States*, 544 U. S. 13, 16, 17 (2005); see also *Taylor*, 495 U. S., at 599 (discussing Missouri burglary statutes). In such cases the Court's "categorical approach" permits the sentencing court "to go beyond the mere fact of conviction" in order to determine whether the earlier "jury was actually required to find all the elements of generic burglary." *Id.*, at 602; see also *Conteh* v. *Gonzales*, 461 F. 3d 45, 54 (CA1 2006) (observing that some courts refer to this step of the *Taylor* inquiry as a "modified categorical approach"). "For example," the sentencing court might examine "the indictment or information and jury instructions" in the earlier case. 495 U. S., at 602. In *Shepard*, we added that, in a nonjury case, the sentencing court might examine not only the "charging document" but also "the terms of a plea agreement," the "transcript of colloquy between judge and defendant," or "some comparable judicial record" of information about the "factual basis for the plea." 544 U. S., at 26.

II

The case before us concerns the application of the framework just set forth to Luis Duenas-Alvarez, the respondent here, a permanent resident alien of the United States. In 2002, Duenas-Alvarez was convicted of violating Cal. Veh. Code Ann. § 10851(a) (West 2000). That section states:

> "Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or *any person who is a party or an accessory to or an accomplice in* the driving or unauthorized taking or stealing, *is guilty* of a public offense." (Emphasis added.)

After Duenas-Alvarez was convicted, the Federal Government, claiming that the conviction was for a generic theft offense, began removal proceedings. A Federal Immigration Judge, agreeing with the Government that the California offense is "a theft offense . . . for which the term of imprisonment [is] at least one year," found Duenas-Alvarez removable. 8 U. S. C. § 1101(a)(43)(G) (footnote omitted); § 1227(a)(2)(A). The Board of Immigration Appeals (BIA) affirmed. Duenas-Alvarez sought review of the BIA's decision in the Court of Appeals for the Ninth Circuit.

While respondent's petition for court review was pending, the Ninth Circuit, in *Penuliar* v. *Ashcroft*, 395 F. 3d 1037 (2005), held that the relevant California Vehicle Code provision, § 10851(a), sweeps more broadly than generic theft. See *id.*, at 1044–1045. In particular, the court said that generic theft has as an element the taking or control of others' property. But, the court added, the California statutory phrase "'[who] is a party or an accessory . . . or an accomplice'" would permit conviction "for aiding and abetting a theft." *Id.*, at 1044 (emphasis deleted). And the court believed that one might "aid" or "abet" a theft without taking or controlling property. *Id.*, at 1044–1045 (citing *Martinez-Perez* v. *Ashcroft*, 393 F. 3d 1018 (CA9 2004), withdrawn and amended, 417 F. 3d 1022 (2005)). Hence, in the Court of Appeals' view, the provision must cover some generically defined "theft" crimes and also some other crimes (aiding and abetting crimes) that, because they are not generically defined "theft" crimes, fall outside the scope of the term "theft" in the immigration statute. 395 F. 3d, at 1044–1045.

The Ninth Circuit subsequently heard Duenas-Alvarez's petition for review and summarily remanded the case to the agency for further proceedings in light of *Penuliar*. 176 Fed. Appx. 820 (2006). We granted the Government's petition for certiorari in order to consider the legal validity of the Ninth Circuit's holding set forth in *Penuliar* and applied

here, namely, the holding that "aiding and abetting" a theft is not itself a crime that falls within the generic definition of theft. We conclude that the Ninth Circuit erred.

III

The Ninth Circuit, like other Circuits and the BIA, accepted as a generic definition of theft, the "taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership, even if such deprivation is less than total or permanent." *Penuliar* v. *Gonzales*, 435 F. 3d 961, 969 (2006) (internal quotation marks omitted). See *Abimbola*, 378 F. 3d, at 176 (analyzing the BIA's definition and citing cases from three other Circuits, including the Ninth Circuit, approving that definition). The question before us is whether one who aids or abets a theft falls, like a principal, within the scope of this generic definition. We conclude that he does.

The common law divided participants in a felony into four basic categories: (1) *first-degree principals*, those who actually committed the crime in question; (2) *second-degree principals*, aiders and abettors present at the scene of the crime; (3) *accessories before the fact*, aiders and abettors who helped the principal before the basic criminal event took place; and (4) *accessories after the fact*, persons who helped the principal after the basic criminal event took place. See *Standefer* v. *United States*, 447 U. S. 10, 15 (1980). In the course of the 20th century, however, American jurisdictions eliminated the distinction among the first three categories. *Id.*, at 16–19; *Nye & Nissen* v. *United States*, 336 U. S. 613, 618 (1949).

Indeed, every jurisdiction—all States and the Federal Government—has "expressly abrogated the distinction" among principals and aiders and abettors who fall into the second and third categories. 2 W. LaFave, Substantive

Criminal Law § 13.1(e), p. 333 (2d ed. 2003) (LaFave). The Solicitor General has presented us with a comprehensive account of the law of all States and federal jurisdictions as well. And we have verified that these jurisdictions treat similarly principals and aiders and abettors who fall into the second or third common-law category. See Appendix A, *infra*. Since criminal law now uniformly treats those who fall into the first three categories alike, "the generic sense in which" the term "theft" "is now used in the criminal codes of most States," *Taylor*, 495 U. S., at 598, covers such "aiders and abettors" as well as principals. And the criminal activities of these aiders and abettors of a generic theft must themselves fall within the scope of the term "theft" in the federal statute.

A

Duenas-Alvarez does not defend the Ninth Circuit's position. He agrees with the Government that generically speaking the law treats aiders and abettors during and before the crime the same way it treats principals; and that the immigration statute must then treat them similarly as well. Instead, Duenas-Alvarez argues that the California Vehicle Code provision in other ways reaches beyond generic theft to cover certain nongeneric crimes.

Duenas-Alvarez points out that California defines "aiding and abetting" such that an aider and abettor is criminally responsible not only for the crime he intends, but also for any crime that "naturally and probably" results from his intended crime. *People* v. *Durham*, 70 Cal. 2d 171, 181, 449 P. 2d 198, 204 (1969) ("'aider and abettor . . . liable for the natural and reasonable or probable consequences of any act that he knowingly aided or encouraged'" (quoting *People* v. *Villa*, 156 Cal. App. 2d 128, 134 (1957); emphasis deleted)). This fact alone does not show that the statute covers a nongeneric theft crime, for relatively few jurisdictions (only 10 in Duenas-Alvarez's own view) have expressly rejected the

"natural and probable consequences" doctrine. See Brief for Respondent 21–22; Appendix B, *infra*. Moreover, many States and the Federal Government apply some form or variation of that doctrine, or permit jury inferences of intent in circumstances similar to those in which California has applied the doctrine, as explained below. See Appendix C, *infra*. To succeed, Duenas-Alvarez must show something *special* about California's version of the doctrine—for example, that California in applying it criminalizes conduct that most other States would not consider "theft."

Duenas-Alvarez attempts to make just such a showing. In particular, he says that California's doctrine, unlike that of most other States, makes a defendant criminally liable for conduct that the defendant did not intend, not even as a known or almost certain byproduct of the defendant's intentional acts. See 1 LaFave § 5.2(a), at 341 (person intends that which he knows "is practically certain to follow from his conduct"). At oral argument, Duenas-Alvarez's counsel suggested that California's doctrine, for example, might hold an individual who wrongly bought liquor for an underage drinker criminally responsible for that young drinker's later (unforeseen) reckless driving. See Tr. of Oral Arg. 44. And Duenas-Alvarez refers to several California cases in order to prove his point. See Brief for Respondent 19.

We have reviewed those cases, however, and we cannot agree that they show that California's law is somehow special. In the first case, *People* v. *Nguyen*, 21 Cal. App. 4th 518, 26 Cal. Rptr. 2d 323 (1993), the Third Appellate District in California upheld the jury conviction of individuals who had aided several robberies at houses of prostitution, for aiding and abetting a sexual assault used by one of the individuals to convince a proprietor, by frightening her, to give up property. *Id.*, at 528, 533–534, 26 Cal. Rptr. 2d, at 329, 333. The court, in upholding the verdict, wrote that "knowledge of another's criminal purpose is not sufficient for aiding and

abetting; the defendant *must also share that purpose or intend to commit, encourage, or facilitate the commission of the crime.*" *Id.*, at 530, 26 Cal. Rptr. 2d, at 330 (emphasis added). The court added that "[w]hile the defendants participated in the criminal endeavor the foreseeability of sexual assault went from possible or likely *to certain*, yet *defendants continued to lend their aid and assistance* to the endeavor." *Id.*, at 534, 26 Cal. Rptr. 2d, at 333 (emphasis added). The court said that the jury could find that the defendants'

> "continuing participation in the criminal endeavor aided the perpetrators by providing the control and security they needed to tarry long enough to commit the sexual offense, by helping to convince the victim that resistance would be useless, and by dissuading the victim's employee from any notion she may have formed of going to the victim's assistance."

And the court concluded:

> "Under these circumstances it will not do for defendants to assert that they were concerned only with robbery and bear no responsibility for the sexual assault." *Id.*, at 533–534, 26 Cal. Rptr. 2d, at 333.

People v. *Simpson*, 66 Cal. App. 2d 319 (1944), affirmed a kidnaping and robbery conviction on an aiding and abetting theory. *Id.*, at 322. Although the defendant argued to the appeals court that she and her compatriots had not planned to kidnap the robbery victim, the record showed that she had brought the gun used to intimidate the victim while he was tied up and placed in a car, in which she and her co-robbers rode with the victim to another location while they robbed him. *Id.*, at 322–323. As in *Nguyen*, the court, noting that kidnaping was the *means* by which the robbery was committed, found that the defendant had the requisite "motive," or intent to commit the kidnaping. 66 Cal. App. 2d, at 326.

People v. *Montes*, 74 Cal. App. 4th 1050, 88 Cal. Rptr. 2d 482 (1999), affirmed an attempted murder conviction where a confederate of the defendant shot the victim after the defendant committed armed assault, simple assault, and breach of the peace. *Id.*, at 1055, 88 Cal. Rptr. 2d, at 485. The court found that the conduct for which the appellant was charged with assault and breach of the peace was a "confrontation . . . punctuated by threats and weaponry" "in the context of an ongoing rivalry between . . . two gangs [that] acted violently toward each other." *Ibid.* The court reasoned that the escalating violence, resulting in someone being shot, was a foreseeable consequence of the defendant's intended act of participating in the gang confrontation. *Ibid.*

Although the court in *Montes* applied a more expansive concept of "motive" or "intent" than did the courts in *Nguyen* and *Simpson*, we cannot say that those concepts as used in any of these cases extend significantly beyond the concept as set forth in the cases of other States. See Appendix C, *infra*.

Moreover, in our view, to find that a state statute creates a crime outside the generic definition of a listed crime in a federal statute requires more than the application of legal imagination to a state statute's language. It requires a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime. To show that realistic probability, an offender, of course, may show that the statute was so applied in his own case. But he must at least point to his own case or other cases in which the state courts in fact did apply the statute in the special (nongeneric) manner for which he argues.

Because Duenas-Alvarez makes no such showing here, we cannot find that California's statute, through the California courts' application of a "natural and probable consequences"

doctrine, creates a subspecies of the Vehicle Code section crime that falls outside the generic definition of "theft."

B

Duenas-Alvarez makes two additional claims. First, he argues that § 10851 holds liable accessories after the fact; and to prove that an individual was an accessory after the fact does not require the Government to show that the individual committed a theft. Second, Duenas-Alvarez argues that § 10851 applies, not only to auto theft, but also to joyriding, which he argues involves so limited a deprivation of the use of a car that it falls outside the generic "theft" definition. See *Van Vechten* v. *American Eagle Fire Ins. Co.*, 239 N. Y. 303, 146 N. E. 432 (1925) (Cardozo, J.) (citing cases for proposition that a very temporary use is not theft).

We shall not consider these claims. The question that we agreed to decide is whether "'theft offense'" in the federal statute "includes aiding and abetting the commission of the offense." See Brief for Petitioner I. Context makes clear that "aiding and abetting" in this question referred to the use of that term in *Penuliar*, *i. e.*, to the second and third common-law categories (principal in the second degree, accessory before the fact), see *supra*, at 189, see also Brief for Petitioner 13, and not to "accessory after the fact." Thus neither this claim nor the "joyriding" claim falls within the terms of the question presented. Regardless, the lower court did not consider the claims, and we decline to reach them in the first instance. See *National Collegiate Athletic Assn.* v. *Smith*, 525 U. S. 459, 469–470 (1999); *Roberts* v. *Galen of Va., Inc.*, 525 U. S. 249, 253–254 (1999) *(per curiam)*; *United States* v. *Bestfoods*, 524 U. S. 51, 72–73 (1998).

For these reasons we vacate the Ninth Circuit's judgment and remand the case for further proceedings consistent with this opinion.

It is so ordered.

APPENDIXES TO OPINION OF THE COURT

A

Ala. Code §§ 13A–2–20, 13A–2–23 (2006); Alaska Stat. §§ 11.16.100, 11.16.110 (2004); Ariz. Rev. Stat. Ann. §§ 13–301, 13–302, 13–303(A) (West 2001); Ark. Code Ann. §§ 5–2–402, 5–2–403(a) (2006); Colo. Rev. Stat. Ann. §§ 18–1–601, 18–1–603 (2006); Conn. Gen. Stat. § 53a–8(a) (2005); Del. Code Ann., Tit. 11, § 271 (1995); D. C. Code § 22–1805 (2001); Fla. Stat. § 777.011 (2006); Ga. Code Ann. § 16–2–20 (2003); Haw. Rev. Stat. §§ 702–221, 702–222 (1993); Idaho Code § 19–1430 (Lexis 2004); Ill. Comp. Stat., ch. 720, §§ 5/5–1, 5/5–2 (West 2004); Ind. Code § 35–41–2–4 (West 2004); Iowa Code § 703.1 (2005); Kan. Stat. Ann. § 21–3205(1) (1995); Ky. Rev. Stat. Ann. § 502.020(1) (West 2006); La. Stat. Ann. § 14:24 (West 1997); Me. Rev. Stat. Ann., Tit. 17–A, § 57(1) (2006); Md. Crim. Proc. Code Ann. § 4–204(b) (Lexis Supp. 2006); Mass. Gen. Laws, ch. 274, § 2 (West 2004); Mich. Comp. Laws Ann. § 767.39 (West 2000); Minn. Stat. § 609.05, subd. 1 (2004); Miss. Code Ann. § 97–1–3 (2006); Mo. Rev. Stat. §§ 562.036, 562.041(1) (2000); Mont. Code Ann. §§ 45–2–301, 45–2–302 (2005); Neb. Rev. Stat. § 28–206 (1995); Nev. Rev. Stat. § 195.020 (2003); N. H. Rev. Stat. Ann. § 626:8 (Supp. 2006); N. J. Stat. Ann. § 2C:2–6 (West 2005); N. M. Stat. Ann. § 30–1–13 (2004); N. Y. Penal Law Ann. § 20.00 (West 2004); N. C. Gen. Stat. Ann. § 14–5.2 (Lexis 2005); N. D. Cent. Code Ann. § 12.1–03–01(1) (Lexis 1997); Ohio Rev. Code Ann. §§ 2923.03(A), (F) (Lexis 2006); Okla. Stat., Tit. 21, § 172 (West 2001); Ore. Rev. Stat. §§ 161.150, 161.155 (2003); 18 Pa. Cons. Stat. § 306 (2002); R. I. Gen. Laws § 11–1–3 (2002); S. C. Code Ann. § 16–1–40 (2003); S. D. Codified Laws §§ 22–3–3, 22–3–3.1 (1998); Tenn. Code Ann. §§ 39–11–401(a), 39–11–402 (2006); Tex. Penal Code Ann. §§ 7.01, 7.02(a) (West 2003); Utah Code Ann. § 76–2–202 (Lexis 2003); Vt. Stat. Ann., Tit. 13, §§ 3–4 (1998); Va. Code Ann. § 18.2–18 (Lexis 2004); Wash. Rev. Code § 9A.08.020

(2006); W. Va. Code Ann. §61–11–6 (Lexis 2005); Wis. Stat. §939.05 (2003–2004); Wyo. Stat. Ann. §6–1–201 (2005).

B

Alaska Stat. §11.16.110; *Riley* v. *State*, 60 P. 3d 204, 214, 219–221 (Alaska App. 2002); *Tarnef* v. *State*, 512 P. 2d 923, 928 (Alaska 1973); *State* v. *Phillips*, 202 Ariz. 427, 435–437, 46 P. 3d 1048, 1056–1058 (2002); *State* v. *Wall*, 212 Ariz. 1, 4–5, 126 P. 3d 148, 151–152 (2006); Colo. Rev. Stat. Ann. §18–1–603; *Bogdanov* v. *People*, 941 P. 2d 247, 250–252, and n. 8, as amended by 955 P. 2d 997 (Colo. 1997), disapproved of on other grounds by *Griego* v. *People*, 19 P. 3d 1, 7–8 (Colo. 2001); *Wilson-Bey* v. *United States*, 903 A. 2d 818, 821–822 (D. C. 2006); *Kitt* v. *United States*, 904 A. 2d 348, 354–356 (D. C. 2006); *Commonwealth* v. *Richards*, 363 Mass. 299, 305–308, 293 N. E. 2d 854, 859–860 (1973); *Commonwealth* v. *Daughtry*, 417 Mass. 136, 137–140, 627 N. E. 2d 928, 930–931 (1994); Mont. Code Ann. §45–2–302; *State ex rel. Keyes* v. *Montana 13th Jud. Dist. Ct.*, 288 Mont. 27, 32–35, 955 P. 2d 639, 642–643 (1998); *Sharma* v. *State*, 118 Nev. 648, 653–657, 56 P. 3d 868, 871–873 (2002) *(per curiam);* cf. *Bolden* v. *State*, 121 Nev. 908, 921–922, 124 P. 3d 191, 200 (2005); *State* v. *Carrasco*, 1997–NMSC–047, ¶¶5–13, 946 P. 2d 1075, 1079–1080; *State* v. *Bacon*, 163 Vt. 279, 286–292, 658 A. 2d 54, 60–63 (1995); *State* v. *Pitts*, 174 Vt. 21, 23–27, 800 A. 2d 481, 483–485 (2002).

C

See, *e. g.*, 2 LaFave §13.3(b), at 361–362, nn. 27–29 (2d ed. 2003 and Supp. 2007) (identifying cases applying the doctrine in California, Delaware, Illinois, Indiana, Iowa, Kansas, Maine, Minnesota, Tennessee, and Wisconsin, as well as in other States where the continued viability of the doctrine is unclear); *State* v. *Medeiros*, 599 A. 2d 723, 726 (R. I. 1991) (aider and abettor intends natural and probable consequences of his acts). See also *Beasley* v. *State*, 360 So. 2d 1275, 1278 (Fla. App. 1978); Ga. Code Ann. §16–2–20; *Jack-*

son v. *State*, 278 Ga. 235, 235–237, 599 S. E. 2d 129, 131–132 (2004); *Jordan* v. *State*, 272 Ga. 395, 395–397, 530 S. E. 2d 192, 193–194 (2000); *Crawford* v. *State*, 210 Ga. App. 36, 36–37, 435 S. E. 2d 64, 65 (1993); *State* v. *Ehrmantrout*, 100 Idaho 202, 595 P. 2d 1097 (1979) *(per curiam)*; *State* v. *Meyers*, 95–750, pp. 5–7 (La. App. 11/26/96), 683 So. 2d 1378, 1382; *State* v. *Holmes*, 388 So. 2d 722, 725–727 (La. 1980); *People* v. *Robinson*, 475 Mich. 1, 8–9, 715 N. W. 2d 44, 49 (2006); *Welch* v. *State*, 566 So. 2d 680, 684–685 (Miss. 1990); *State* v. *Roberts*, 709 S. W. 2d 857, 863, and n. 6 (Mo. 1986); *State* v. *Ferguson*, 20 S. W. 3d 485, 497 (Mo. 2000); *State* v. *Logan*, 645 S. W. 2d 60, 64–65 (Mo. App. 1982); *State* v. *Leonor*, 263 Neb. 86, 95–97, 638 N. W. 2d 798, 807 (2002); N. J. Stat. Ann. §2C:2–6; *State* v. *Torres*, 183 N. J. 554, 566–567, 874 A. 2d 1084, 1092 (2005); *State* v. *Weeks*, 107 N. J. 396, 401–406, 526 A. 2d 1077, 1080–1082 (1987); Ohio Rev. Code Ann. §2923.03; *State* v. *Johnson*, 93 Ohio St. 3d 240, 242–246, 754 N. E. 2d 796, 799–801 (2001); *State* v. *Herring*, 94 Ohio St. 3d 246, 248–251, 762 N. E. 2d 940, 947–948 (2002); Ore. Rev. Stat. §161.155; *State* v. *Pine*, 336 Ore. 194, 203–205, 206–208, and n. 6, 82 P. 3d 130, 135, 137, and n. 6 (2003); *State* v. *Anlauf*, 164 Ore. App. 672, 674–677, and n. 1, 995 P. 2d 547, 548–549, and n. 1 (2000); *Hudgins* v. *Moore*, 337 S. C. 333, 339, n. 5, 524 S. E. 2d 105, 108, n. 5 (1999); S. D. Codified Laws §22–3–3; *State* v. *Tofani*, 2006 SD 63, ¶¶31–48, 719 N. W. 2d 391, 400–405; *State* v. *Richmond*, 90 S. W. 3d 648, 654–656 (Tenn. 2002); Tex. Penal Code Ann. §7.02; *Ex parte Thompson*, 179 S. W. 3d 549, 552 (Tex. Crim. App. 2005); *Gordon* v. *State*, 640 S. W. 2d 743, 758 (Tex. App. 1982); Utah Code Ann. §76–2–202; *State* v. *Alvarez*, 872 P. 2d 450, 461 (Utah 1994); *State* v. *Crick*, 675 P. 2d 527, 534 (Utah 1983); *State* v. *Rodoussakis*, 204 W. Va. 58, 77, 511 S. E. 2d 469, 488 (1998); *Jahnke* v. *State*, 692 P. 2d 911, 921–922 (Wyo. 1984); *Fales* v. *State*, 908 P. 2d 404, 408 (Wyo. 1995); *United States* v. *Edwards*, 303 F. 3d 606, 637 (CA5 2002), cert. denied, 537 U. S. 1192 (2003); *United States* v. *Walker*, 99 F. 3d 439, 443 (CADC 1996); *United States* v.

Miller, 22 F. 3d 1075, 1078–1079 (CA11 1994); *United States* v. *Moore*, 936 F. 2d 1508, 1527 (CA7), cert. denied, 502 U. S. 991 (1991); *United States* v. *Graewe*, 774 F. 2d 106, 108, n. 1 (CA6 1985), cert. denied, 474 U. S. 1068 and 1069 (1986); *United States* v. *Barnett*, 667 F. 2d 835, 841 (CA9 1982); *United States* v. *DeLaMotte*, 434 F. 2d 289, 293 (CA2 1970), cert. denied, 401 U. S. 921 (1971).

JUSTICE STEVENS, concurring in part and dissenting in part.

While I join Parts I, II, and III–B of the Court's opinion, as well as its judgment, I do not join Part III–A. I am not prepared to disagree with anything said in Part III–A, but I believe we would be well advised to withhold comment on issues of California law until after they have been addressed by the Court of Appeals in the first instance. Limiting our decision to the question we granted certiorari to answer, though not a rigid rule, is generally prudent. Doing so seems particularly wise whenever reaching beyond the question presented requires analysis of disputed issues of state law. Because circuit judges are generally more familiar with the law of the States within their respective jurisdictions than we are, we have often followed the sound practice of deferring to the courts of appeals on such matters even when we did not necessarily share their views. See, *e. g.*, *Haring* v. *Prosise*, 462 U. S. 306, 314 (1983); *Bishop* v. *Wood*, 426 U. S. 341, 345–346, and n. 10 (1976) (collecting cases); see also *Elk Grove Unified School Dist.* v. *Newdow*, 542 U. S. 1, 16 (2004). I would adhere to that settled practice in this case.

Syllabus

JONES *v.* BOCK, WARDEN, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 05–7058. Argued October 30, 2006—Decided January 22, 2007*

The Prison Litigation Reform Act of 1995 (PLRA), in order to address the large number of prisoner complaints filed in federal court, mandates early judicial screening of prisoner complaints and requires prisoners to exhaust prison grievance procedures before filing suit. 42 U. S. C. § 1997e(a). Petitioners, inmates in Michigan prisons, filed grievances using the Michigan Department of Corrections (MDOC) grievance process. After unsuccessfully seeking redress through that process, petitioner Jones filed a § 1983 suit against six prison officials. The District Court dismissed on the merits as to four of them and as to two others found that Jones had failed to adequately plead exhaustion in his complaint. Petitioner Williams also filed a § 1983 suit after his two MDOC grievances were denied. The District Court found that he had not exhausted his administrative remedies with regard to one of the grievances because he had not identified any of the respondents named in the lawsuit during the grievance process. While the court found Williams's other claim properly exhausted, it dismissed the entire suit under the Sixth Circuit's total exhaustion rule for PLRA cases. Petitioner Walton's § 1983 lawsuit also was dismissed under the total exhaustion rule because his MDOC grievance named only one of the six defendants in his lawsuit. The Sixth Circuit affirmed in each case, relying on its procedural rules that require a prisoner to allege and demonstrate exhaustion in his complaint, permit suit only against defendants identified in the prisoner's grievance, and require courts to dismiss the entire action if the prisoner fails to satisfy the exhaustion requirement as to any single claim in his complaint.

Held: The Sixth Circuit's rules are not required by the PLRA, and crafting and imposing such rules exceeds the proper limits of the judicial role. Pp. 211–224.

(a) Failure to exhaust is an affirmative defense under the PLRA, and inmates are not required to specially plead or demonstrate exhaustion in their complaints. There is no question that exhaustion is mandatory

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*Together with No. 05–7142, *Williams* v. *Overton et al.*, and *Walton* v. *Bouchard et al.* (see this Court's Rule 12.4), also on certiorari to the same court.

under the PLRA, *Porter* v. *Nussle*, 534 U. S. 516, 524, but it is less clear whether the prisoner must plead and demonstrate exhaustion in the complaint or the defendant must raise lack of exhaustion as an affirmative defense. Failure to exhaust is better viewed as an affirmative defense. Federal Rule of Civil Procedure 8(a) requires simply a "short and plain statement of the claim" in a complaint, and PLRA claims are typically brought under 42 U. S. C. § 1983, which does not require exhaustion at all. The fact that the PLRA dealt extensively with exhaustion, but is silent on the issue whether exhaustion must be pleaded or is an affirmative defense, is strong evidence that the usual practice should be followed, and the practice under the Federal Rules is to regard exhaustion as an affirmative defense, including in the similar statutory scheme governing habeas corpus, *Day* v. *McDonough*, 547 U. S. 198, 208. Courts should generally not depart from the Federal Rules' usual practice based on perceived policy concerns. See, *e. g.*, *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163. Those courts that require prisoners to plead and demonstrate exhaustion contend that prisoner complaints must be treated outside of the typical framework if the PLRA's screening requirement is to function effectively. But the screening requirement does not—explicitly or implicitly—justify deviating from the usual procedural practice beyond the departures specified by the PLRA itself. Although exhaustion was a "centerpiece" of the PLRA, *Woodford* v. *Ngo*, 548 U. S. 81, 84, failure to exhaust was notably not added in terms to the enumerated grounds justifying dismissal upon early screening. Section 1997e(g)—which allows defendants to waive their right to reply to a prisoner complaint without being deemed to have admitted the complaint's allegations—shows that when Congress meant to depart from the usual procedural requirements, it did so expressly. Given that the PLRA does not itself require plaintiffs to plead exhaustion, such a result "must be obtained by . . . amending the Federal Rules, and not by judicial interpretation." *Leatherman*, *supra*, at 168. Pp. 211–217.

(b) Exhaustion is not *per se* inadequate under the PLRA when an individual later sued was not named in the grievance. Nothing in the MDOC policy supports the conclusion that the grievance process was improperly invoked because an individual later named as a defendant was not named at the first step of the process; at the time each grievance was filed here, the MDOC policy did not specifically require a prisoner to name anyone in the grievance. Nor does the PLRA impose such a requirement. The "applicable procedural rules" that a prisoner must properly exhaust, *Woodford*, *supra*, at 88, are defined not by the PLRA, but by the prison grievance process itself. As the MDOC's pro-

Syllabus

cedures make no mention of naming particular officials, the Sixth Circuit's rule imposing such a prerequisite to proper exhaustion is unwarranted. The Circuit's rule may promote early notice to those who might later be sued, but that has not been thought to be one of the leading purposes of the exhaustion requirement. The court below should determine in the first instance whether petitioners' grievances otherwise satisfied the exhaustion requirement. Pp. 217–219.

(c) The PLRA does not require dismissal of the entire complaint when a prisoner has failed to exhaust some, but not all, of the claims included in the complaint. Respondents argue that had Congress intended courts to dismiss only unexhausted claims while retaining the balance of the lawsuit, it would have used the word "claim" instead of "action" in § 1997e(a), which provides that "[n]o action shall be brought" unless administrative procedures are exhausted. That boilerplate language is used in many instances in the Federal Code, and statutory references to an "action" have not typically been read to mean that every claim included in the action must meet the pertinent requirement before the "action" may proceed. If a complaint contains both good and bad claims, the court proceeds with the good and leaves the bad. Respondents note that the total exhaustion requirement in habeas corpus is an exception to this general rule, but a court presented with a mixed habeas petition typically "allow[s] the petitioner to delete the unexhausted claims and to proceed with the exhausted claims," *Rhines* v. *Weber*, 544 U. S. 269, 278, which is the opposite of the rule the Sixth Circuit adopted, and precisely the rule that respondents argue against. Although other PLRA sections distinguish between actions and claims, respondents' reading of § 1997e(a) creates its own inconsistencies, and their policy arguments are also unpersuasive. Pp. 219–224.

No. 05–7058, 135 Fed. Appx. 837; No. 05–7142, 136 Fed. Appx. 846 (second judgment) and 859 (first judgment), reversed and remanded.

ROBERTS, C. J., delivered the opinion for a unanimous Court.

Jean-Claude André, by appointment of the Court, 547 U. S. 1067, argued the cause and filed briefs for petitioners in all cases under this Court's Rule 12.4.

Linda M. Olivieri, Assistant Attorney General of Michigan, argued the cause for respondents in all cases. With her on the brief were *Michael A. Cox*, Attorney General,

Thomas L. Casey, Solicitor General, and *John L. Thurber*, Assistant Attorney General.†

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

In an effort to address the large number of prisoner complaints filed in federal court, Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), 110 Stat. 1321–71, as amended, 42 U. S. C. § 1997e *et seq.* Among other reforms, the PLRA mandates early judicial screening of prisoner complaints and requires prisoners to exhaust prison grievance procedures before filing suit. 28 U. S. C. § 1915A; 42 U. S. C. § 1997e(a). The Sixth Circuit, along with some other lower courts, adopted several procedural rules designed to imple-

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†A brief of *amici curiae* urging reversal was filed for the American Civil Liberties Union et al. by *Margaret Winter*, *Elizabeth Alexander*, *Steven R. Shapiro*, *Michael J. Steinberg*, *Kary L. Moss*, *John Boston*, *Giovanna Shay*, *Jerome N. Frank*, *Paul D. Reingold*, *Stephen Hanlon*, *Sandra Girard*, and *David A. Singleton*.

A brief of *amici curiae* was filed for the State of New York et al. by *Eliot Spitzer*, former Attorney General of New York, *Caitlin J. Halligan*, Solicitor General, *Daniel Smirlock*, Deputy Solicitor General, *Peter H. Schiff*, Senior Counsel, and *Robert M. Goldfarb* and *Martin A. Hotvet*, Assistant Solicitors General, and by the Attorneys General and former Attorneys General for their respective jurisdictions as follows: *Troy King* of Alabama, *David Márquez* of Alaska, *Mike Beebe* of Arkansas, *Bill Lockyer* of California, *John W. Suthers* of Colorado, *Carl C. Danberg* of Delaware, *Robert J. Spagnoletti* of the District of Columbia, *Charles J. Crist, Jr.*, of Florida, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *J. Joseph Curran, Jr.*, of Maryland, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Jon Bruning* of Nebraska, *George J. Chanos* of Nevada, *Wayne Stenehjem* of North Dakota, *Jim Petro* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Patrick Lynch* of Rhode Island, *Henry McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Paul G. Summers* of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Robert F. McDonnell* of Virginia, *Rob McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, *Peggy A. Lautenschlager* of Wisconsin, and *Patrick J. Crank* of Wyoming.

ment this exhaustion requirement and facilitate early judicial screening. These rules require a prisoner to allege and demonstrate exhaustion in his complaint, permit suit only against defendants who were identified by the prisoner in his grievance, and require courts to dismiss the entire action if the prisoner fails to satisfy the exhaustion requirement as to any single claim in his complaint. Other lower courts declined to adopt such rules. We granted certiorari to resolve the conflict and now conclude that these rules are not required by the PLRA, and that crafting and imposing them exceeds the proper limits on the judicial role.

I

Prisoner litigation continues to "account for an outsized share of filings" in federal district courts. *Woodford* v. *Ngo*, 548 U. S. 81, 94, n. 4 (2006). In 2005, nearly 10 percent of all civil cases filed in federal courts nationwide were prisoner complaints challenging prison conditions or claiming civil rights violations.[1] Most of these cases have no merit; many are frivolous. Our legal system, however, remains committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law. The challenge lies in ensuring that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit. See *Neitzke* v. *Williams*, 490 U. S. 319, 327 (1989).

Congress addressed that challenge in the PLRA. What this country needs, Congress decided, is fewer and better prisoner suits. See *Porter* v. *Nussle*, 534 U. S. 516, 524 (2002) (PLRA intended to "reduce the quantity and improve

[1] See Administrative Office of the United States Courts, Judicial Facts and Figures, Tables 4.4, 4.6, http://www.uscourts.gov/judicialfactsfigures/contents.html (as visited Jan. 17, 2007, and available in Clerk of Court's case file). That number *excludes* habeas corpus petitions and motions to vacate a sentence. If these filings are included, prisoner complaints constituted 24 percent of all civil filings in 2005.

the quality of prisoner suits"). To that end, Congress enacted a variety of reforms designed to filter out the bad claims and facilitate consideration of the good. Key among these was the requirement that inmates complaining about prison conditions exhaust prison grievance remedies before initiating a lawsuit.

The exhaustion provision of the PLRA states:

> "No action shall be brought with respect to prison conditions under [42 U. S. C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U. S. C. § 1997e(a).

Requiring exhaustion allows prison officials an opportunity to resolve disputes concerning the exercise of their responsibilities before being haled into court. This has the potential to reduce the number of inmate suits, and also to improve the quality of suits that are filed by producing a useful administrative record. *Woodford*, *supra*, at 94–95. In an attempt to implement the exhaustion requirement, some lower courts have imposed procedural rules that have become the subject of varying levels of disagreement among the federal courts of appeals.

The first question presented centers on a conflict over whether exhaustion under the PLRA is a pleading requirement the prisoner must satisfy in his complaint or an affirmative defense the defendant must plead and prove.[2] The

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[2] Compare *Steele* v. *Federal Bureau of Prisons*, 355 F. 3d 1204, 1210 (CA10 2003) (pleading requirement); *Brown* v. *Toombs*, 139 F. 3d 1102, 1104 (CA6 1998) *(per curiam)* (same); *Rivera* v. *Allin*, 144 F. 3d 719, 731 (CA11 1998) (same), with *Anderson* v. *XYZ Correctional Health Servs., Inc.*, 407 F. 3d 674, 681 (CA4 2005) (affirmative defense); *Wyatt* v. *Terhune*, 315 F. 3d 1108, 1119 (CA9 2003) (same); *Casanova* v. *Dubois*, 304 F. 3d 75, 77, n. 3 (CA1 2002) (same); *Ray* v. *Kertes*, 285 F. 3d 287, 295 (CA3 2002) (same); *Foulk* v. *Charrier*, 262 F. 3d 687, 697 (CA8 2001) (same); *Massey* v. *Helman*, 196 F. 3d 727, 735 (CA7 1999) (same); *Jenkins* v. *Haubert*, 179

Sixth Circuit, adopting the former view, requires prisoners to attach proof of exhaustion—typically copies of the grievances—to their complaints to avoid dismissal. If no written record of the grievance is available, the inmate must plead with specificity how and when he exhausted the grievance procedures. *Knuckles El* v. *Toombs*, 215 F. 3d 640, 642 (2000).

The next issue concerns how courts determine whether a prisoner has properly exhausted administrative remedies—specifically, the level of detail required in a grievance to put the prison and individual officials on notice of the claim. The Sixth Circuit requires that a prisoner have identified, in the first step of the grievance process, each individual later named in the lawsuit to properly exhaust administrative remedies. *Burton* v. *Jones*, 321 F. 3d 569, 575 (2003). Other Circuits have taken varying approaches to this question, see, *e. g.*, *Butler* v. *Adams*, 397 F. 3d 1181, 1183 (CA9 2005) (proper exhaustion requires use of the administrative process provided by the State; if that process does not require identification of specific persons, neither does the PLRA); *Johnson* v. *Johnson*, 385 F. 3d 503, 522 (CA5 2004) ("[T]he grievance must provide administrators with a fair opportunity under the circumstances to address the problem that will later form the basis of the suit"); *Riccardo* v. *Rausch*, 375 F. 3d 521, 524 (CA7 2004) (exhaustion satisfied if grievance "served its function of alerting the state and inviting corrective action"), none going as far as the Sixth Circuit in requiring in every case that the defendants have been named from the beginning of the grievance process.

Finally, the Circuits are divided over what the PLRA requires when both exhausted and unexhausted claims are in-

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F. 3d 19, 28–29 (CA2 1999) (same). See also *Johnson* v. *Johnson*, 385 F. 3d 503, 516, n. 7 (CA5 2004) (noting the conflict but not deciding the question); *Jackson* v. *District of Columbia*, 254 F. 3d 262, 267 (CADC 2001) (treating exhaustion as an affirmative defense).

cluded in a complaint.[3] Some Circuits, including the Sixth Circuit, apply a "total exhaustion" rule, under which no part of the suit may proceed if any single claim in the action is not properly exhausted. See, *e. g.*, *Jones Bey* v. *Johnson*, 407 F. 3d 801, 805 (CA6 2005). Among Circuits requiring total exhaustion there is further disagreement over what to do if the requirement is not met. Most courts allow the prisoner to amend his complaint to include only exhausted claims, *e. g.*, *Kozohorsky* v. *Harmon*, 332 F. 3d 1141, 1144 (CA8 2003), but the Sixth Circuit denies leave to amend, dismisses the action, and requires that it be filed anew with only exhausted claims, *Baxter* v. *Rose*, 305 F. 3d 486, 488 (2002); *Jones Bey*, *supra*, at 807. See also *McGore* v. *Wrigglesworth*, 114 F. 3d 601, 612 (1997). Other Circuits reject total exhaustion altogether, instead dismissing only unexhausted claims and considering the rest on the merits. See, *e. g.*, *Ortiz* v. *McBride*, 380 F. 3d 649, 663 (CA2 2004).

A

Petitioners are inmates in the custody of the Michigan Department of Corrections (MDOC). At the time petitioners filed their grievances, MDOC Policy Directive 03.02.130 (Nov. 1, 2000) set forth the applicable grievance procedures. 1 App. 138–157.[4] The policy directive describes what issues

[3] Compare *Jones Bey* v. *Johnson*, 407 F. 3d 801, 805 (CA6 2005) (requiring dismissal of the entire action if one unexhausted claim is present); *Ross* v. *County of Bernalillo*, 365 F. 3d 1181, 1189 (CA10 2004) (same); *Vazquez* v. *Ragonese*, 142 Fed. Appx. 606, 607 (CA3 2005) *(per curiam)* (same); *Kozohorsky* v. *Harmon*, 332 F. 3d 1141, 1144 (CA8 2003) (same), with *Lira* v. *Herrera*, 427 F. 3d 1164, 1175 (CA9 2005) (allowing dismissal of only unexhausted claims); *Ortiz* v. *McBride*, 380 F. 3d 649, 663 (CA2 2004) (same); *Lewis* v. *Washington*, 300 F. 3d 829, 835 (CA7 2002) (same). See also *Johnson*, *supra*, at 523, n. 15 (suggesting that total exhaustion is an open question in the Fifth Circuit).

[4] MDOC has since revised its policy. See Policy Directive 03.02.130 (effective Dec. 19, 2003), App. to Brief for Respondents 1b. The new policy is not at issue in these cases.

are grievable and contains instructions for filing and processing grievances.

Inmates must first attempt to resolve a problem orally within two business days of becoming aware of the grievable issue. *Id.*, at 147. If oral resolution is unsuccessful, the inmate may proceed to Step I of the grievance process, and submit a completed grievance form within five business days of the attempted oral resolution. *Id.*, at 147, 149–150. The Step I grievance form provided by MDOC (a one-page form on which the inmate fills out identifying information and is given space to describe the complaint) advises inmates to be "brief and concise in describing your grievance issue." 2 *id.*, at 1. The inmate submits the grievance to a designated grievance coordinator, who assigns it to a respondent—generally the supervisor of the person being grieved. 1 *id.*, at 150.

If the inmate is dissatisfied with the Step I response, he may appeal to Step II by obtaining an appeal form within five business days of the response, and submitting the appeal within five business days of obtaining the form. *Id.*, at 152. The respondent at Step II is designated by the policy, *id.*, at 152–153 (*e. g.*, the regional health administrator for medical care grievances). If still dissatisfied after Step II, the inmate may further appeal to Step III using the same appeal form; the MDOC director is designated as respondent for all Step III appeals. *Id.*, at 154.

Lorenzo Jones

Petitioner Lorenzo Jones is incarcerated at MDOC's Saginaw Correctional Facility. In November 2000, while in MDOC's custody, Jones was involved in a vehicle accident and suffered significant injuries to his neck and back. Several months later Jones was given a work assignment he allegedly could not perform in light of his injuries. According to Jones, respondent Paul Morrison—in charge of work assignments at the prison—made the inappropriate assign-

ment, even though he knew of Jones's injuries. When Jones reported to the assignment, he informed the staff member in charge—respondent Michael Opanasenko—that he could not perform the work; Opanasenko allegedly told him to do the work or "'suffer the consequences.'" *Id.*, at 20. Jones performed the required tasks and allegedly aggravated his injuries. After unsuccessfully seeking redress through MDOC's grievance process, Jones filed a complaint in the Eastern District of Michigan under 42 U. S. C. § 1983 for deliberate indifference to medical needs, retaliation, and harassment. Jones named as defendants, in addition to Morrison and Opanasenko, respondents Barbara Bock (the warden), Valerie Chaplin (a deputy warden), Janet Konkle (a registered nurse), and Ahmad Aldabaugh (a physician).

A Magistrate Judge recommended dismissal for failure to state a claim with respect to Bock, Chaplin, Konkle, and Aldabaugh, and the District Court agreed. 1 App. 41. With respect to Morrison and Opanasenko, however, the Magistrate Judge recommended that the suit proceed, finding that Jones had exhausted his administrative remedies as to those two. *Id.*, at 18–29. The District Court Judge disagreed. In his complaint, Jones provided the dates on which his claims were filed at various steps of the MDOC grievance procedures. *Id.*, at 41. He did not, however, attach copies of the grievance forms or describe the proceedings with specificity. Respondents attached copies of all of Jones's grievances to their own motion to dismiss, but the District Judge ruled that Jones's failure to meet his burden to plead exhaustion in his complaint could not be cured by respondents. *Id.*, at 42. The Sixth Circuit agreed, holding both that Jones failed to comply with the specific pleading requirements applied to PLRA suits, 135 Fed. Appx. 837, 839 (2005) *(per curiam)* (citing *Knuckles El*, 215 F. 3d, at 642), and that, even if Jones had shown that he exhausted the claims against Morrison and Opanasenko, dismissal was still required under

the total exhaustion rule, 135 Fed. Appx., at 839 (citing *Jones Bey*, 407 F. 3d, at 806).

Timothy Williams

Petitioner Timothy Williams is incarcerated at MDOC's Adrian Correctional Facility. He suffers from noninvoluting cavernous hemangiomas in his right arm, a medical condition that causes pain, immobility, and disfigurement of the limb, and for which he has undergone several surgeries. An MDOC physician recommended further surgery to provide pain relief, but MDOC's Correctional Medical Services denied the recommendation (and subsequent appeals by the doctor) on the ground that the danger of surgery outweighed the benefits, which it viewed as cosmetic. The MDOC Medical Services Advisory Committee upheld this decision. After Correctional Medical Services indicated that it would take the request under advisement, Williams filed a grievance objecting to the quality of his medical care and seeking authorization for the surgery. He later filed another grievance complaining that he was denied a single-occupancy handicapped cell, allegedly necessary to accommodate his medical condition. After both grievances were denied at all stages, Williams filed a complaint in the Eastern District of Michigan under § 1983, naming as respondents William Overton (former director of MDOC), David Jamrog (the warden), Mary Jo Pass and Paul Klee (assistant deputy wardens), Chad Markwell (corrections officer), Bonnie Peterson (health unit manager), and Dr. George Pramstaller (chief medical officer for MDOC).

The District Judge found that Williams had failed to exhaust his administrative remedies with regard to his medical care claim because he had not identified any of the respondents named in his lawsuit during the grievance process.[5]

[5] Dr. Pramstaller was mentioned at Step III of the grievance process, but was apparently never served with the complaint initiating the lawsuit. The Magistrate Judge stated that even if the claims against Pramstaller

Although Williams's claim concerning the handicapped cell had been properly exhausted, the District Judge—applying the total exhaustion rule—dismissed the entire suit. The Sixth Circuit affirmed. 136 Fed. Appx. 859, 861–863 (2005) (citing *Burton*, 321 F. 3d, at 574, *Curry* v. *Scott*, 249 F. 3d 493, 504–505 (CA6 2001), and *Jones Bey*, *supra*, at 805).

John Walton

Petitioner John Walton is incarcerated at MDOC's Alger Maximum Correctional Facility. After assaulting a guard, he was sanctioned with an indefinite "upper slot" restriction.[6] Several months later, upon learning that other prisoners had been given upper slot restrictions of only three months for the same infraction, he filed a grievance claiming that this disparity was the result of racial discrimination (Walton is black, the two other prisoners he identified in his grievances are white). After the grievance was denied, Walton filed a complaint in the Western District of Michigan under § 1983, claiming race discrimination. He named as respondents Barbara Bouchard (former warden), Ken Gearin, David Bergh, and Ron Bobo (assistant deputy wardens), Catherine Bauman (resident unit manager), and Denise Gerth (assistant resident unit supervisor).

The District Judge dismissed the lawsuit because Walton had not named any respondent other than Bobo in his griev-

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had been properly exhausted they nonetheless were subject to dismissal under the total exhaustion rule. 1 App. 86, 101. It also appears that under the Sixth Circuit's rule requiring a defendant to be named at Step I of the grievance process, the claims against Pramstaller, who was not mentioned until Step III, would not have been exhausted. See *supra*, at 205; n. 7, *infra*. Because Pramstaller was never served, he is not a respondent in this Court.

[6] An upper slot restriction limits the inmate to receiving food and paperwork via the lower slot of the cell door. Brief for Respondents 5–6. Presumably, this is less desirable than access through the upper slot; the record does not reveal how effective this particular sanction is in discouraging assaults on staff.

ance. His claims against the other respondents were thus not properly exhausted, and the court dismissed the entire action under the total exhaustion rule. The Sixth Circuit affirmed, reiterating its requirement that a prisoner must "file a grievance against the person he ultimately seeks to sue," *Curry*, *supra*, at 505, and that this requirement can only be satisfied by naming each defendant at Step I of the MDOC grievance process. Because Walton had exhausted prison remedies only as to respondent Bobo, the Sixth Circuit affirmed the District Court's dismissal of the entire action. 136 Fed. Appx. 846, 848–849 (2005).

B

Jones sought review in a petition for certiorari, arguing that the Sixth Circuit's heightened pleading requirement and total exhaustion rule contravene the clear language of the Federal Rules of Civil Procedure and the PLRA. Williams and Walton filed a joint petition under this Court's Rule 12.4, contending that the rule requiring every defendant to be named during the grievance process is not required by the PLRA, and also challenging the total exhaustion rule. We granted both petitions for certiorari, 547 U. S. 1002 (2006), and consolidated the cases for our review.

II

There is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought in court. *Porter*, 534 U. S., at 524. What is less clear is whether it falls to the prisoner to plead and demonstrate exhaustion in the complaint, or to the defendant to raise lack of exhaustion as an affirmative defense. The minority rule, adopted by the Sixth Circuit, places the burden of pleading exhaustion in a case covered by the PLRA on the prisoner; most courts view failure to exhaust as an affirmative defense. See n. 2, *supra*.

We think petitioners, and the majority of courts to consider the question, have the better of the argument. Federal Rule of Civil Procedure 8(a) requires simply a "short and plain statement of the claim" in a complaint, while Rule 8(c) identifies a nonexhaustive list of affirmative defenses that must be pleaded in response. The PLRA itself is not a source of a prisoner's claim; claims covered by the PLRA are typically brought under 42 U. S. C. § 1983, which does not require exhaustion at all, see *Patsy* v. *Board of Regents of Fla.*, 457 U. S. 496, 516 (1982). Petitioners assert that courts typically regard exhaustion as an affirmative defense in other contexts, see Brief for Petitioners 34–36, and nn. 12–13 (citing cases), and respondents do not seriously dispute the general proposition. We have referred to exhaustion in these terms, see, *e. g.*, *Wright* v. *Universal Maritime Service Corp.*, 525 U. S. 70, 75 (1998) (referring to "failure to exhaust" as an "affirmative defens[e]"), including in the similar statutory scheme governing habeas corpus, *Day* v. *McDonough*, 547 U. S. 198, 208 (2006) (referring to exhaustion as a "defense"). The PLRA dealt extensively with the subject of exhaustion, see 42 U. S. C. §§ 1997e(a), (c)(2), but is silent on the issue whether exhaustion must be pleaded by the plaintiff or is an affirmative defense. This is strong evidence that the usual practice should be followed, and the usual practice under the Federal Rules is to regard exhaustion as an affirmative defense.

In a series of recent cases, we have explained that courts should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns. Thus, in *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163 (1993), we unanimously reversed the Court of Appeals for imposing a heightened pleading standard in § 1983 suits against municipalities. We explained that "[p]erhaps if [the] Rules . . . were rewritten today, claims against municipalities under § 1983 might be subjected to the added specificity requirement . . . . But

that is a result which must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Id.*, at 168.

In *Swierkiewicz* v. *Sorema N. A.*, 534 U. S. 506 (2002), we unanimously reversed the Court of Appeals for requiring employment discrimination plaintiffs to specifically allege the elements of a prima facie case of discrimination. We explained that "the Federal Rules do not contain a heightened pleading standard for employment discrimination suits," and a "requirement of greater specificity for particular claims" must be obtained by amending the Federal Rules. *Id.*, at 515 (citing *Leatherman*). And just last Term, in *Hill* v. *McDonough*, 547 U. S. 573 (2006), we unanimously rejected a proposal that § 1983 suits challenging a method of execution must identify an acceptable alternative: "Specific pleading requirements are mandated by the Federal Rules of Civil Procedure, and not, as a general rule, through case-by-case determinations of the federal courts." *Id.*, at 582 (citing *Swierkiewicz*).

The Sixth Circuit and other courts requiring prisoners to plead and demonstrate exhaustion in their complaints contend that if the "new regime" mandated by the PLRA for prisoner complaints is to function effectively, prisoner complaints must be treated outside of this typical framework. See *Baxter*, 305 F. 3d, at 489. These courts explain that the PLRA not only imposed a new mandatory exhaustion requirement, but also departed in a fundamental way from the usual procedural ground rules by requiring judicial screening to filter out nonmeritorious claims: Courts are to screen inmate complaints "before docketing, if feasible or, . . . as soon as practicable after docketing," and dismiss the complaint if it is "frivolous, malicious, . . . fails to state a claim upon which relief may be granted[,] or . . . seeks monetary relief from a defendant who is immune from such relief." 28 U. S. C. §§ 1915A(a), (b). All this may take place before any responsive pleading is filed—unlike in the typical civil case, defend-

ants do not have to respond to a complaint covered by the PLRA until required to do so by the court, and waiving the right to reply does not constitute an admission of the allegations in the complaint. See 42 U. S. C. §§ 1997e(g)(1), (2). According to respondents, these departures from the normal litigation framework of complaint and response mandate a different pleading requirement for prisoner complaints, if the screening is to serve its intended purpose. See, *e. g.*, *Baxter*, *supra*, at 489 ("This court's heightened pleading standards for complaints covered by the PLRA are designed to facilitate the Act's screening requirements . . . "); *Knuckles El*, 215 F. 3d, at 642. See also Brief for Respondents 17.

We think that the PLRA's screening requirement does not—explicitly or implicitly—justify deviating from the usual procedural practice beyond the departures specified by the PLRA itself. Before the PLRA, the *in forma pauperis* provision of § 1915, applicable to most prisoner litigation, permitted *sua sponte* dismissal only if an action was frivolous or malicious. 28 U. S. C. § 1915(d) (1994 ed.); see also *Neitzke*, 490 U. S., at 320 (concluding that a complaint that fails to state a claim was not frivolous under § 1915(d) and thus could not be dismissed *sua sponte*). In the PLRA, Congress added failure to state a claim and seeking monetary relief from a defendant immune from such relief as grounds for *sua sponte* dismissal of *in forma pauperis* cases, § 1915(e)(2)(B) (2000 ed.), and provided for judicial screening and *sua sponte* dismissal of prisoner suits on the same four grounds, § 1915A(b); 42 U. S. C. § 1997e(c)(1). Although exhaustion was a "centerpiece" of the PLRA, *Woodford*, 548 U. S., at 84, failure to exhaust was notably not added in terms to this enumeration. There is thus no reason to suppose that the normal pleading rules have to be altered to facilitate judicial screening of complaints specifically for failure to exhaust.

Some courts have found that exhaustion is subsumed under the PLRA's enumerated ground authorizing early dis-

missal for "fail[ure] to state a claim upon which relief may be granted." 28 U. S. C. §§ 1915A(b)(1), 1915(e)(2)(B); 42 U. S. C. § 1997e(c)(1). See *Baxter*, *supra*, at 489; *Steele* v. *Federal Bureau of Prisons*, 355 F. 3d 1204, 1210 (CA10 2003); *Rivera* v. *Allin*, 144 F. 3d 719, 731 (CA11 1998). The point is a bit of a red herring. A complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief. If the allegations, for example, show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim; that does not make the statute of limitations any less an affirmative defense, see Fed. Rule Civ. Proc. 8(c). Whether a particular ground for opposing a claim may be the basis for dismissal for failure to state a claim depends on whether the allegations in the complaint suffice to establish that ground, not on the nature of the ground in the abstract. See *Leveto* v. *Lapina*, 258 F. 3d 156, 161 (CA3 2001) ("[A] complaint may be subject to dismissal under Rule 12(b)(6) when an affirmative defense . . . appears on its face" (internal quotation marks omitted)). See also *Lopez-Gonzalez* v. *Comerio*, 404 F. 3d 548, 551 (CA1 2005) (dismissing a complaint barred by the statute of limitations under Rule 12(b)(6)); *Pani* v. *Empire Blue Cross Blue Shield*, 152 F. 3d 67, 74–75 (CA2 1998) (dismissing a complaint barred by official immunity under Rule 12(b)(6)). See also 5B C. Wright & A. Miller, Federal Practice and Procedure § 1357, pp. 708–710, 721–729 (3d ed. 2004). Determining that Congress meant to include failure to exhaust under the rubric of "failure to state a claim" in the screening provisions of the PLRA would thus not support treating exhaustion as a pleading requirement rather than an affirmative defense.

The argument that screening would be more effective if exhaustion had to be shown in the complaint proves too much; the same could be said with respect to any affirmative defense. The rejoinder that the PLRA focused on exhaus-

tion rather than other defenses simply highlights the failure of Congress to include exhaustion in terms among the enumerated grounds justifying dismissal upon early screening. As noted, that is not to say that failure to exhaust cannot be a basis for dismissal for failure to state a claim. It is to say that there is no basis for concluding that Congress implicitly meant to transform exhaustion from an affirmative defense to a pleading requirement by the curiously indirect route of specifying that courts should screen PLRA complaints and dismiss those that fail to state a claim.

Respondents point to 42 U. S. C. § 1997e(g) as confirming that the usual pleading rules should not apply to PLRA suits, but we think that provision supports petitioners. It specifies that defendants can waive their right to reply to a prisoner complaint without the usual consequence of being deemed to have admitted the allegations in the complaint. See § 1997e(g)(1) (allowing defendants to waive their response without admitting the allegations "[n]otwithstanding any other law or rule of procedure"). This shows that when Congress meant to depart from the usual procedural requirements, it did so expressly.

We conclude that failure to exhaust is an affirmative defense under the PLRA, and that inmates are not required to specially plead or demonstrate exhaustion in their complaints. We understand the reasons behind the decisions of some lower courts to impose a pleading requirement on plaintiffs in this context, but that effort cannot fairly be viewed as an interpretation of the PLRA. "Whatever temptations the statesmanship of policy-making might wisely suggest," the judge's job is to construe the statute—not to make it better. Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527, 533 (1947). The judge "must not read in by way of creation," but instead abide by the "duty of restraint, th[e] humility of function as merely the translator of another's command." *Id.*, at 533–534. See *United States* v. *Goldenberg*, 168 U. S. 95, 103

(1897) ("No mere omission . . . which it may seem wise to have specifically provided for, justif[ies] any judicial addition to the language of the statute"). Given that the PLRA does not itself require plaintiffs to plead exhaustion, such a result "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Leatherman*, 507 U. S., at 168.

III

The Sixth Circuit threw out the Williams and Walton suits because those prisoners had not identified in their initial grievances each defendant they later sued. 136 Fed. Appx., at 862–863; *id.*, at 848–849. See *Burton*, 321 F. 3d, at 575.[7] Here again the lower court's procedural rule lacks a textual basis in the PLRA. The PLRA requires exhaustion of "such administrative remedies as are available," 42 U. S. C. § 1997e(a), but nothing in the statute imposes a "name all defendants" requirement along the lines of the Sixth Circuit's judicially created rule. Respondents argue that without such a rule the exhaustion requirement would become a "'useless appendage,'" Brief for Respondents 44 (quoting *Woodford*, 548 U. S., at 93), but the assertion is hyperbole, and the citation of *Woodford* misplaced.

Woodford held that "proper exhaustion" was required under the PLRA, and that this requirement was not satisfied when grievances were dismissed because prisoners had

[7] This "name all defendants" rule apparently applies even when a prisoner does not learn the identity of the responsible party until a later step of the grievance process. Upon learning the identity of the responsible party, the prisoner is required to bring an entirely new grievance to properly exhaust. 136 Fed. Appx. 846, 849 (CA6 2005) ("At that point [after he learned, in response to a Step I grievance, that Gearin was responsible for the upper slot restriction], Walton was armed with all of the information that he needed to file a Step I grievance against . . . Gearin—and a federal complaint against Gearin once the claim had been exhausted—but he simply chose not to follow this route"). At oral argument, Michigan admitted that it did not agree with at least this application of the rule. Tr. of Oral Arg. 44–45.

missed deadlines set by the grievance policy. *Id.*, at 93–95. At the time each of the grievances at issue here was filed, in contrast, the MDOC policy did not contain any provision specifying who must be named in a grievance. MDOC's policy required only that prisoners "be as specific as possible" in their grievances, 1 App. 148, while at the same time the required forms advised them to "[b]e brief and concise," 2 *id.*, at 1. The MDOC grievance form does not require a prisoner to identify a particular responsible party, and the respondent is not necessarily the allegedly culpable prison official, but rather an administrative official designated in the policy to respond to particular types of grievances at different levels. *Supra*, at 207. The grievance policy specifically provides that the grievant at Step I "shall have the opportunity to explain the grievance more completely at [an] interview, enabling the Step I respondent to gather any additional information needed to respond to the grievance." 1 App. 151. Nothing in the MDOC policy itself supports the conclusion that the grievance process was improperly invoked simply because an individual later named as a defendant was not named at the first step of the grievance process.

Nor does the PLRA impose such a requirement. In *Woodford*, we held that to properly exhaust administrative remedies prisoners must "complete the administrative review process in accordance with the applicable procedural rules," 548 U. S., at 88—rules that are defined not by the PLRA, but by the prison grievance process itself. Compliance with prison grievance procedures, therefore, is all that is required by the PLRA to "properly exhaust." The level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion. As MDOC's procedures make no mention of naming particular officials, the Sixth Circuit's rule imposing such a prerequisite to proper exhaustion is unwarranted.

We have identified the benefits of exhaustion to include allowing a prison to address complaints about the program it administers before being subjected to suit, reducing litigation to the extent complaints are satisfactorily resolved, and improving litigation that does occur by leading to the preparation of a useful record. See *id.*, at 88–91; *Porter*, 534 U. S., at 524–525. The Sixth Circuit rule may promote early notice to those who might later be sued, but that has not been thought to be one of the leading purposes of the exhaustion requirement. See *Johnson*, 385 F. 3d, at 522 ("We are mindful that the primary purpose of a grievance is to alert prison officials to a problem, not to provide personal notice to a particular official that he may be sued; the grievance is not a summons and complaint that initiates adversarial litigation"); see also Brief for American Civil Liberties Union et al. as *Amici Curiae* 8–9, and n. 6 (collecting grievance procedures and noting that the majority do not require prisoners to identify specific individuals).

We do not determine whether the grievances filed by petitioners satisfied the requirement of "proper exhaustion," *Woodford*, *supra*, at 93, but simply conclude that exhaustion is not *per se* inadequate simply because an individual later sued was not named in the grievances. We leave it to the court below in the first instance to determine the sufficiency of the exhaustion in these cases.

IV

The final issue concerns how courts should address complaints in which the prisoner has failed to exhaust some, but not all, of the claims asserted in the complaint.[8] All agree

[8] Although we reverse the Sixth Circuit's rulings on the substantive exhaustion requirements as to all three petitioners, the question whether a total exhaustion rule is contemplated by the PLRA is not moot. In Jones's case, the Sixth Circuit ruled in the alternative that total exhaustion required dismissal. 135 Fed. Appx. 837, 839 (2005) *(per curiam)* ("[E]ven if Jones had shown he had exhausted some of his claims, the

that no unexhausted claim may be considered. The issue is whether the court should proceed with the exhausted claims, or instead—as the Sixth Circuit has held—dismiss the entire action if any one claim is not properly exhausted. See *Jones Bey*, 407 F. 3d, at 807.[9]

Here the Sixth Circuit can point to language in the PLRA in support of its rule. Section 1997e(a) provides that "[n]o action shall be brought" unless administrative procedures are exhausted. Respondents argue that if Congress intended courts to dismiss only unexhausted claims while retaining the balance of the lawsuit, the word "claim" rather than "action" would have been used in this provision.

This statutory phrasing—"no action shall be brought"—is boilerplate language. There are many instances in the Federal Code where similar language is used, but such language has not been thought to lead to the dismissal of an entire action if a single claim fails to meet the pertinent standards. Statutes of limitations, for example, are often introduced by a variant of the phrase "no action shall be brought," see, *e. g.*, *Beach* v. *Ocwen Fed. Bank*, 523 U. S. 410, 416 (1998); 18 U. S. C. § 1030(g) (2000 ed., Supp. IV), but we have never heard of an entire complaint being thrown out simply because one of several discrete claims was barred by the statute of limitations, and it is hard to imagine what purpose such a rule would serve. The same is true with respect to other uses of the "no action shall be brought" phrasing. See, *e. g.*, *Hawksbill Sea Turtle* v. *Federal Emergency Management Agency*, 126 F. 3d 461, 471 (CA3 1997) (dismissing only

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district court properly dismissed the complaint because Jones did not show that he had exhausted all of his claims").

[9] After we granted certiorari, the Sixth Circuit suggested that the adoption of a total exhaustion rule in that Circuit in *Jones Bey* ran contrary to previous panel decisions and was therefore not controlling. *Spencer* v. *Bouchard*, 449 F. 3d 721, 726 (2006). See also Rule 206(c) (CA6 2006). As total exhaustion was applied in the cases under review, and the Sixth Circuit is not the only court to apply this rule, we do not concern ourselves with this possible intracircuit split.

claims that fail to comply with the citizen suit notification requirement of 16 U. S. C. § 1540(g)(2), which states that "[n]o action may be commenced" until an agency has declined to act after being given written notice).

More generally, statutory references to an "action" have not typically been read to mean that every claim included in the action must meet the pertinent requirement before the "action" may proceed. See, *e. g.*, *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U. S. 546, 560–563 (2005) (District Court had jurisdiction over a "civil action" under 28 U. S. C. § 1367(a), even if it might not have jurisdiction over each separate claim pressed in the action); *Chicago* v. *International College of Surgeons*, 522 U. S. 156, 166 (1997) (District Court had jurisdiction over removed "civil action" even if every claim did not satisfy jurisdictional prerequisites).

As a general matter, if a complaint contains both good and bad claims, the court proceeds with the good and leaves the bad. "[O]nly the bad claims are dismissed; the complaint as a whole is not. If Congress meant to depart from this norm, we would expect some indication of that, and we find none." *Robinson* v. *Page*, 170 F. 3d 747, 748–749 (CA7 1999) (considering § 1997e(e)).

Respondents note an exception to this general rule, the total exhaustion rule in habeas corpus. In *Rose* v. *Lundy*, 455 U. S. 509, 522 (1982), we held that "mixed" habeas petitions—containing both exhausted and unexhausted claims—cannot be adjudicated. This total exhaustion rule applied in habeas was initially derived from considerations of "comity and federalism," not any statutory command. *Rhines* v. *Weber*, 544 U. S. 269, 273 (2005); *id.*, at 274 (noting that Congress "preserved *Lundy*'s total exhaustion requirement" in 28 U. S. C. § 2254(b)(1)(A)). Separate claims in a single habeas petition generally seek the same relief from custody, and success on one is often as good as success on another. In such a case it makes sense to require exhaustion of all claims in state court before allowing the federal action to

proceed. A typical PLRA suit with multiple claims, on the other hand, may combine a wide variety of discrete complaints, about interactions with guards, prison conditions, generally applicable rules, and so on, seeking different relief on each claim. There is no reason failure to exhaust on one necessarily affects any other. In any event, even if the habeas total exhaustion rule is pertinent, it does not in fact depart from the usual practice—as we recently held, a court presented with a mixed habeas petition "should allow the petitioner to delete the unexhausted claims and to proceed with the exhausted claims . . . ." *Rhines*, *supra*, at 278. This is the opposite of the rule the Sixth Circuit adopted, and precisely the rule that respondents argue against.

Respondents' reading of 42 U. S. C. § 1997e(a) to contain a total exhaustion rule is bolstered by the fact that other sections of the PLRA distinguish between actions and claims. Section 1997e(c)(1), for example, provides that a court shall dismiss an *action* for one of four enumerated deficiencies, while § 1997e(c)(2) allows a court to dismiss a *claim* for one of these reasons without first determining whether the claim is exhausted. Similarly, 28 U. S. C. § 1915A(b) directs district courts to dismiss "the complaint, or any portion of the complaint," before docketing under certain circumstances. This demonstrates that Congress knew how to differentiate between the entire action and particular claims when it wanted to, and suggests that its use of "action" rather than "claim" in 42 U. S. C. § 1997e(a) should be given effect.

But the interpretation respondents advocate creates its own inconsistencies. Section 1997e(e) contains similar language, "[n]o . . . action may be brought . . . for mental or emotional injury suffered while in custody without a prior showing of physical injury," yet respondents cite no case interpreting this provision to require dismissal of the entire lawsuit if only one claim does not comply, and again we see little reason for such an approach. Accord, *Cassidy* v. *Indiana Dept. of Corrections*, 199 F. 3d 374, 376–377 (CA7 2000)

(dismissing only the portions of the complaint barred by § 1997e(e)); see also *Williams* v. *Ollis*, 230 F. 3d 1361 (CA6 2000) (unpublished table decision) (same). Interpreting the phrase "no action shall be brought" to require dismissal of the entire case under § 1997e(a) but not § 1997e(e) would contravene our normal rules of statutory construction. *National Credit Union Admin.* v. *First Nat. Bank & Trust Co.*, 522 U. S. 479, 501–502 (1998).

In pressing the total exhaustion argument, respondents also marshal the policy and purpose underlying the PLRA—this time in a supporting rather than lead role. The invigorated exhaustion requirement is a "centerpiece" of the statute, *Woodford*, 548 U. S., at 84, and if the exhaustion requirement of § 1997e(a) is not effectuated by a total exhaustion rule, they argue, inmates will have little incentive to ensure that they have exhausted all available administrative remedies before proceeding to court. The PLRA mandated early judicial screening to reduce the burden of prisoner litigation on the courts; a total exhaustion rule allows courts promptly to dismiss an action upon identifying an unexhausted claim. The alternative approach turns judges into editors of prisoner complaints, rather than creating an incentive for prisoners to exhaust properly. See *Ross* v. *County of Bernalillo*, 365 F. 3d 1181, 1190 (CA10 2004).

We are not persuaded by these policy arguments. In fact, the effect of a total exhaustion rule could be that inmates will file various claims in separate suits, to avoid the possibility of an unexhausted claim tainting the others. That would certainly not comport with the purpose of the PLRA to reduce the quantity of inmate suits. Additionally, district judges who delve into a prisoner complaint only to realize it contains an unexhausted claim, requiring dismissal of the entire complaint under the total exhaustion rule, will often have to begin the process all over again when the prisoner refiles. In light of typically short prison grievance time limits, prisoners' refiled complaints will often be identical to

what the district court would have considered had it simply dismissed unexhausted claims as it encountered them and proceeded with the exhausted ones. Perhaps filing fees and concerns about the applicability of the "three strikes" rule, 28 U. S. C. § 1915(g), would mitigate these effects, but the debate about consequences is close enough that there is no clear reason to depart from the more typical claim-by-claim approach.

* * *

We are not insensitive to the challenges faced by the lower federal courts in managing their dockets and attempting to separate, when it comes to prisoner suits, not so much wheat from chaff as needles from haystacks. We once again reiterate, however—as we did unanimously in *Leatherman*, *Swierkiewicz*, and *Hill*—that adopting different and more onerous pleading rules to deal with particular categories of cases should be done through established rulemaking procedures, and not on a case-by-case basis by the courts.

The judgments of the United States Court of Appeals for the Sixth Circuit are reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

OSBORN *v.* HALEY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 05–593. Argued October 30, 2006—Decided January 22, 2007

The federal statute commonly known as the Westfall Act accords federal employees absolute immunity from tort claims arising out of acts undertaken in the course of their official duties, 28 U. S. C. §2679(b)(1), and empowers the Attorney General to certify that a federal employee sued for wrongful or negligent conduct "was acting within the scope of his office or employment at the time of the incident out of which the claim arose," §2679(d)(1), (2). Upon such certification, the United States is substituted as defendant in place of the employee, and the action is thereafter governed by the Federal Tort Claims Act. If the action commenced in state court, the Westfall Act calls for its removal to a federal district court, and renders the Attorney General's certification "conclusiv[e] . . . for purposes of removal." §2679(d)(2).

Plaintiff-petitioner Pat Osborn sued federal employee Barry Haley in state court. Osborn alleged that Haley tortiously interfered with her employment with a private contractor, that he conspired to cause her wrongful discharge, and that his efforts to bring about her discharge were outside the scope of his employment. The United States Attorney, serving as the Attorney General's delegate, certified that Haley was acting within the scope of his employment at the time of the conduct alleged in Osborn's complaint. She thereupon removed the case to a Federal District Court, where she asserted that the alleged wrongdoing never occurred. The District Court, relying on Osborn's allegations, entered an order that rejected the Westfall Act certification, denied the Government's motion to substitute the United States as defendant in Haley's place, and remanded the case to the state court. The Sixth Circuit vacated the District Court's order, holding that a Westfall Act certification is not improper simply because the United States denies the occurrence of the incident on which the plaintiff centrally relies. Based on §2679(d)(2)'s direction that certification is "conclusiv[e] . . . for purposes of removal," the Court of Appeals instructed the District Court to retain jurisdiction over the case.

Held:

1. The Attorney General's certification is conclusive for purposes of removal, *i. e.*, once certification and removal are effected, exclusive com-

petence to adjudicate the case resides in the federal court, and that court may not remand the suit to the state court. Pp. 237–245.

(a) The Sixth Circuit had jurisdiction to review the order rejecting the Attorney General's certification and denying substitution of the United States as defendant. Under the collateral order doctrine of *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, the District Court's ruling, which effectively denied Haley Westfall Act protection, qualifies as a reviewable final decision under 28 U. S. C. § 1291. Meeting *Cohen*'s three criteria, the District Court's denial of certification and substitution conclusively decided a contested issue, the issue decided is important and separate from the merits of the action, and the District Court's disposition would be effectively unreviewable later in the litigation. 337 U. S., at 546. Pp. 238–239.

(b) The Sixth Circuit also had jurisdiction to review the District Court's remand order. Pp. 239–245.

(1) The Sixth Circuit had jurisdiction to review the District Court's remand order, notwithstanding 28 U. S. C. § 1447(d), which states that "[a]n order remanding a case to the State court . . . is not reviewable on appeal or otherwise . . . ." This Court held, in *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336, that § 1447(c) confines § 1447(d)'s scope. Section 1447(c) provides that a case must be remanded "if . . . it appears that the district court lacks subject matter jurisdiction." Under *Thermtron*, "only remand orders issued under § 1447(c) and invoking the [mandatory ground] specified therein . . . are immune from review" under § 1447(d). *Id.*, at 346. To determine whether *Thermtron*'s reasoning controls here, the Westfall Act's design, particularly its prescriptions regarding the removal and remand of actions filed in state court, must be examined.

When the Attorney General certifies that a federal employee named defendant in a state-court tort action was acting within the scope of his or her employment at the time in question, the action "shall be removed" to federal court and the United States must be substituted as the defendant. § 2679(d)(2). Of prime importance here, § 2679(d)(2) concludes with the command that the "certification of the Attorney General shall *conclusively establish scope of office or employment for purposes of removal*." (Emphasis added.) This directive markedly differs from Congress' instruction for cases in which the Attorney General "refuse[s] to certify scope of office or employment." § 2679(d)(3). In that event, the defendant-employee may petition the court in which the action is instituted to make the scope-of-employment certification. If the employee so petitions in an action filed in state court, the Attorney General may, at his discretion, remove the action to federal court. If removal has occurred, and thereafter "the district court determines that

the employee was not acting within the scope of his office or employment, the action . . . *shall be remanded to the State court*." *Ibid.* (emphasis added).

The Act's distinction between removed cases in which the Attorney General issues a scope-of-employment certification and those in which he does not leads to the conclusion that Congress gave district courts no authority to return cases to state courts on the ground that the Attorney General's certification was unwarranted. Section 2679(d)(2) does not preclude a district court from resubstituting the federal official as defendant for purposes of trial if the court determines, postremoval, that the Attorney General's scope-of-employment certification was incorrect. For purposes of establishing a forum for adjudication, however, § 2679(d)(2) renders the Attorney General's certification dispositive. Were it open to a district court to remand a removed action on the ground that the Attorney General's certification was erroneous, § 2679(d)(2)'s final instruction would be weightless. Congress adopted the "conclusiv[e] . . . for the purposes of removal" language to "foreclose needless shuttling of a case from one court to another," *Gutierrez de Martinez* v. *Lamagno*, 515 U. S. 417, 433, n. 10. The provision ensures that "once a state tort action has been removed to a federal court after a certification by the Attorney General, it may never be remanded to the state system." *Id.*, at 440 (SOUTER, J., dissenting).

Thermtron held that § 1447(d) must be read together with § 1447(c). There is stronger cause to hold that § 1447(c) and (d) must be read together with the later enacted § 2679(d)(2). Both § 1447(d) and § 2679(d)(2) are antishuttling provisions that aim to prevent "prolonged litigation of questions of jurisdiction of the district court to which the cause is removed." *United States* v. *Rice*, 327 U. S. 742, 751. Once the Attorney General certifies scope of employment, triggering removal of the case to a federal forum, § 2679(d)(2) renders the federal court exclusively competent and categorically precludes a remand to the state court. By declaring certification conclusive as to the federal forum's jurisdiction, Congress has barred a district court from passing the case back to state court based on the court's disagreement with the Attorney General's scope-of-employment determination. Of the two antishuttling commands, § 1447(d) and § 2679(d)(2), only one can prevail and the Court holds that the latter controls. Tailor-made for Westfall Act cases, § 2679(d)(2) "conclusively" determines that the action shall be adjudicated in the federal forum, and may not be returned to the state system. Pp. 239–244.

(2) The Westfall Act's command that a district court retain jurisdiction over a case removed pursuant to § 2679(d)(2) does not run afoul of Article III. An Article III question could arise in this case only if,

after full consideration, the District Court determined that Haley engaged in tortious conduct outside the scope of his employment. Because, at that point, little would be left to adjudicate as to his liability, and because a significant federal question (whether he has Westfall Act immunity) would have been raised at the outset, the case would "aris[e] under" federal law as that term is used in Article III. Even if only state-law claims remained after resolution of the federal question, the District Court would have authority, consistent with Article III, to retain jurisdiction. Pp. 244–245.

2. Westfall Act certification is proper when a federal officer charged with misconduct asserts, and the Attorney General concludes, that the incident or episode in suit never occurred. Pp. 245–253.

(a) Because the Westfall Act's purpose is to shield covered employees not only from liability but from suit, it is appropriate to afford protection to an employee on duty at the time and place of an "incident" alleged in a complaint who denies that the incident occurred. Just as the Government's certification that an employee "was acting within the scope of his employment" is subject to threshold judicial review, *Lamagno*, 515 U. S., at 434, so a complaint's charge of conduct outside the scope of employment, when contested, warrants immediate judicial investigation. Otherwise, a federal employee would be stripped of suit immunity not by what the court finds, but by what the complaint alleges. This position is supported by *Willingham* v. *Morgan*, 395 U. S. 402, which concerned 28 U. S. C. § 1442, the federal officer removal statute. Section 1442 allows a federal officer to remove a civil action from state court if the officer is "sued in an official or individual capacity for any act under color of such office." The Court held in *Willingham* that the language of § 1442 is "broad enough to cover all cases where federal officers can raise a colorable defense arising out of the duty to enforce federal law." 395 U. S., at 406–407. There is no reason to conclude that the Attorney General's ability to remove a suit to federal court under § 2679(d)(2), unlike a federal officer's ability to remove under § 1442, should be controlled by the plaintiff's allegations. Pp. 247–251.

(b) Tugging against this reading is a "who decides" concern. If the Westfall Act certification must be respected unless and until the District Court determines that Haley, in fact, engaged in conduct beyond the scope of his employment, then Osborn may be denied a jury trial. Upon the Attorney General's certification, however, the action is "deemed to be . . . brought against the United States," § 2679(d)(2), and the Seventh Amendment, which preserves the right to a jury trial in common-law suits, does not apply to proceedings against the sovereign. Thus, at the time the district court reviews the Attorney General's certification, the plaintiff has no right to a jury trial. The Westfall Act's

core purpose—to relieve covered employees from the cost and effort of defending the lawsuit and to place those burdens on the Government—also bears on the appropriate trier of any facts essential to certification. Immunity-related issues should be decided at the earliest opportunity. See, *e. g.*, *Hunter* v. *Bryant*, 502 U. S. 224, 228 *(per curiam)*. Pp. 251–253.

422 F. 3d 359, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, and ALITO, JJ., joined, in which SOUTER, J., joined except for Parts II–B and II–C, and in which BREYER, J., joined as to Parts I and II. SOUTER, J., *post*, p. 253, and BREYER, J., *post*, p. 255, filed opinions concurring in part and dissenting in part. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 262.

Eric Grant argued the cause for petitioner. With him on the briefs was *Andrea M. Miller*.

Douglas Hallward-Driemeier argued the cause for respondents. With him on the brief for the federal respondent were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Kneedler*, *Barbara L. Herwig*, and *Mark W. Pennak*. *C. Thomas Miller*, *J. Duncan Pitchford*, and *Richard C. Roberts* filed a brief for respondents Gaye Verdi, fka Gaye Luber, et al.*

JUSTICE GINSBURG delivered the opinion of the Court.

The Federal Employees Liability Reform and Tort Compensation Act of 1988, commonly known as the Westfall Act, accords federal employees absolute immunity from common-law tort claims arising out of acts they undertake in the course of their official duties. See 28 U. S. C. §2679(b)(1). When a federal employee is sued for wrongful or negligent conduct, the Act empowers the Attorney General to certify

*A brief of *amici curiae* urging reversal was filed for the State of California et al. by *Bill Lockyer*, Attorney General of California, *Manuel Medeiros*, State Solicitor General, and *Marc A. Le Forestier*, Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Tom Miller* of Iowa, *Jim Hood* of Mississippi, and *Darrell V. McGraw, Jr.*, of West Virginia.

that the employee "was acting within the scope of his office or employment at the time of the incident out of which the claim arose." § 2679(d)(1), (2). Upon the Attorney General's certification, the employee is dismissed from the action, and the United States is substituted as defendant in place of the employee. The litigation is thereafter governed by the Federal Tort Claims Act (FTCA), 60 Stat. 842. If the action commenced in state court, the case is to be removed to a federal district court, and the certification remains "conclusiv[e] . . . for purposes of removal." § 2679(d)(2).

In *Gutierrez de Martinez* v. *Lamagno*, 515 U. S. 417, 420 (1995), we held that the Attorney General's Westfall Act scope-of-employment certification is subject to judicial review. Today, we address three further questions regarding the Westfall Act's operation: (1) Is Attorney General certification proper when a federal officer denies the occurrence of the tortious conduct alleged by the plaintiff; (2) does § 2679(d)(2), by rendering the Attorney General's certification "conclusiv[e] . . . for purposes of removal," bar remand even if the federal court determines that the United States should not be substituted as defendant in place of the federal employee; and (3) does 28 U. S. C. § 1447(d)'s bar on appellate review of remand orders override § 2679(d)(2)'s direction that, for purposes of removal, the Attorney General's certification is conclusive. The first two questions were advanced in the petition for certiorari; in our order granting review, we asked the parties to address the impact of § 1447(d) on this case.

Pat Osborn, plaintiff-petitioner in the civil action now before the Court, sued federal employee Barry Haley in a Kentucky state court. She alleged that Haley tortiously interfered with her employment with a private contractor and conspired to cause her wrongful discharge. Osborn further alleged that Haley's efforts to bring about her discharge were outside the scope of his employment. The United States Attorney, serving as the Attorney General's delegate,

countered Osborn's allegations by certifying that Haley "was acting within the scope of his employment . . . at the time of the conduct alleged in [Osborn's] complaint." App. to Brief in Opposition 23 (hereinafter Luber App.). Based on this certification, the case was removed to the United States District Court for the Western District of Kentucky, as § 2679(d)(2) instructs.

In the federal forum, the United States Attorney denied the tortious conduct Osborn attributed to Haley, asserting that the wrongdoing she alleged never occurred. Accepting Osborn's allegations as true, the District Court entered an order that rejected the Attorney General's Westfall Act certification, denied the Government's motion to substitute the United States as defendant in place of Haley, and remanded the case to the state court. On appeal, the Sixth Circuit vacated the District Court's order, and instructed that court to retain jurisdiction over the case.

We affirm the Court of Appeals' judgment. On the merits, we agree with the Sixth Circuit that the District Court, in denying substitution of the United States as defendant in lieu of Haley, misconstrued the Westfall Act. Substitution of the United States is not improper simply because the Attorney General's certification rests on an understanding of the facts that differs from the plaintiff's allegations. The United States, we hold, must remain the federal defendant in the action unless and until the District Court determines that the employee, *in fact*, and not simply as alleged by the plaintiff, engaged in conduct beyond the scope of his employment. On the jurisdictional issues, we hold that the Attorney General's certification is conclusive for purposes of removal, *i. e.*, once certification and removal are effected, exclusive competence to adjudicate the case resides in the federal court, and that court may not remand the suit to the state court. We also hold that § 1447(d)'s bar on appellate review of remand orders does not displace § 2679(d)(2), which

shields from remand an action removed pursuant to the Attorney General's certification.

I

Petitioner Pat Osborn worked for Land Between the Lakes Association (LBLA), a private company that contracted with the United States Forest Service to provide staff for the Land Between the Lakes National Recreation Area in Kentucky.[1] While employed by LBLA, Osborn applied for a trainee position with the Forest Service. Respondent Barry Haley, a Forest Service officer, was responsible for the Service's hiring process. At a meeting with LBLA employees, Haley announced that he had hired someone else for the job Osborn sought. Osborn asked why Haley did not inform her before the meeting, and she made a joke at Haley's expense. After the meeting, Osborn's supervisor told her to apologize to Haley; she refused.

A few weeks later, Osborn filed a complaint with the United States Department of Labor, asking the Department to investigate whether the Forest Service, in its hiring decision, had given appropriate consideration to the veterans' preference points to which she was entitled. The Department's investigator, Robert Kuenzli, after interviewing Haley, concluded that the hiring procedure had been handled correctly. Kuenzli so informed Osborn, who then asked him to close her complaint. On the same day LBLA's executive director, respondent Gaye Luber, summoned Osborn and demanded that she apologize to Haley for "not being a good Forest Service partner." Complaint ¶18, Luber App. 4. Osborn again refused. Two days later, she was fired.

Osborn filed suit against Haley, Luber, and LBLA in a Kentucky state court. She alleged that Haley tortiously interfered with her employment relationship with LBLA and

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[1] We draw this account of the facts from the District Court's opinion and order denying reconsideration, supplemented by the allegations in Osborn's complaint.

conspired to cause her wrongful discharge. Specifically, she charged that Haley maliciously induced Luber to fire her, and that Haley did so in retaliation for Osborn's Department of Labor complaint requesting a veterans' preference inquiry. Complaint ¶29, *id.*, at 7. In response the local United States Attorney, invoking the Westfall Act, certified on behalf of the Attorney General that Haley "was acting within the scope of his employment with the U. S. Forest Service, at the time of the conduct alleged in [Osborn's] complaint." *Id.*, at 23. As is customary, the certification stated no reasons for the determination.[2]

In the Westfall Act, Congress instructed:

> "Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. *This certification of the Attorney General*

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[2] The certification read:

"I, Monica Wheatley, Acting United States Attorney, Western District of Kentucky, acting pursuant to the provisions of 28 U. S. C. §2679(d)(2), and by virtue of the authority vested in me by the Appendix to 28 C. F. R. §15.3 (1990), hereby certify that the Office of the United States Attorney has reviewed the available facts in this matter. On the basis of the information now available to me with respect to the allegations in the complaint, I find that the named federal defendant, Barry Haley, was acting within the scope of his employment with the U. S. Forest Service, at the time of the conduct alleged in the complaint." Luber App. 23.

> *shall conclusively establish scope of office or employment for purposes of removal.*" 28 U. S. C. § 2679(d)(2) (emphasis added).

Citing this provision, as well as the federal officer removal statute, § 1442,[3] the United States removed the case to the United States District Court for the Western District of Kentucky. The United States Attorney notified the District Court that the United States should be substituted for Haley as defendant, and filed a motion to dismiss on the ground that Osborn had not exhausted administrative remedies, as required by the FTCA.

Osborn opposed the substitution and the motion to dismiss. She argued that Haley's conduct was outside the scope of his employment, hence the Westfall Act afforded him no immunity. As support for her opposition, Osborn submitted a memorandum of understanding between LBLA and the Forest Service, which cautioned Forest Service employees against involvement in LBLA employment decisions.

Apparently under the impression that the United States, at that preliminary stage, did not dispute Osborn's factual allegations, the District Court declined to conduct an evidentiary hearing. Under Kentucky law, the court observed, if Osborn's allegations were true, Haley had acted outside the scope of his employment. In the District Court's view the closeness in time of Osborn's request for a Department of Labor investigation, Kuenzli's call to Haley, and Luber's demand for an apology justified an inference that Haley interfered with Osborn's employment in violation of the LBLA-Forest Service memorandum of understanding. So reasoning, the District Court overruled the Westfall Act cer-

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[3] The federal officer removal statute provides that "[a] civil action or criminal prosecution commenced in a State court against" "any officer . . . of the United States . . . sued in an official or individual capacity for any act under color of such office" "may be removed . . . to the district court of the United States for the district and division embracing the place wherein it is pending." § 1442(a), (a)(1).

tification and denied substitution. Under this ruling, the United States was no longer before the court. Furthermore, the parties were not of diverse citizenship and no federal law was at issue. The District Court therefore held that it lacked subject-matter jurisdiction over the case.[4] Invoking § 1447(c),[5] the court concluded that the case must be remanded to the state court.

The United States moved for reconsideration, urging that, contrary to the District Court's impression, the Government did contest Osborn's factual allegations. Recalling that it had denied Osborn's allegations in its answer to her complaint, the United States submitted sworn declarations from Haley and Luber. Haley's stated that he was not in communication with Luber between the time of Kuenzli's investigation and Osborn's firing. Luber's declaration stated that Osborn's request for an investigation regarding her veterans' preference points could not have had any bearing on Osborn's termination, for Luber was unaware of the request at the relevant time. Absent contrary evidence, the Government maintained, these declarations sufficed to support the certification and the continuance of the United States as defendant in place of Haley. In the alternative, the Government sought discovery.[6]

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[4] The District Court did not address the propriety of removal under § 1442. See *infra*, at 249, n. 13.

[5] Section 1447(c) provides:

"A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case."

[6] The District Court refused to entertain the alternative argument that, if a relevant Haley-Luber conversation did occur, Haley was acting within the scope of his employment. Because Haley had declared, under oath,

The District Court denied the Government's reconsideration motion. The Haley and Luber declarations, the court said, clarified that the controversy centered on whether there had been any communication between Haley and Luber influencing Luber's decision to fire Osborn. The Westfall Act would have shielded Haley, the Court suggested, had the United States admitted a Haley-Luber communication but defended its content as within the scope of Haley's employment. Westfall Act certification was improper, the court concluded, because the United States did not admit, but instead denied, the occurrence of the event central to proof of Osborn's claim. The District Court acknowledged disagreement among the Circuits on the availability of a Westfall Act certification when the United States "den[ies] the occurrence of the basic incident charged." *Wood* v. *United States*, 995 F. 2d 1122, 1124 (CA1 1993) (en banc). Compare *ibid.* and *McHugh* v. *University of Vermont*, 966 F. 2d 67, 74–75 (CA2 1992) (prohibiting incident-denying certifications), with *Heuton* v. *Anderson*, 75 F. 3d 357, 360 (CA8 1996); *Kimbro* v. *Velten*, 30 F. 3d 1501, 1508 (CADC 1994); and *Melo* v. *Hafer*, 13 F. 3d 736, 746–747 (CA3 1994) (allowing incident-denying certifications). Choosing to follow the First Circuit's opinion in *Wood*, the District Court adhered to its prior ruling that the Westfall Act certification in this case was invalid.

On appeal, the Sixth Circuit vacated the District Court's order denying certification and substitution. 422 F. 3d 359, 365 (2005). The Court of Appeals, in accord with *Heuton*,

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that he did not communicate with Luber, the court was unwilling to allow discovery on the question whether, if Haley did contact Luber, he was acting within the scope of his employment. But cf. Fed. Rule Civ. Proc. 8(e)(2) (subject to Rule 11 obligations, parties may plead claims or defense "alternately or hypothetically"). We express no opinion on the propriety of the District Court's refusal to consider the Government's alternative pleading.

Kimbro, and *Melo*, held that a Westfall Act certification is not improper simply because the United States denies the occurrence of the incident on which the plaintiff centrally relies. 422 F. 3d, at 364. Rather, the court held, where "the Attorney General's certification is based on a different understanding of the facts than is reflected in the complaint, including a denial of the harm-causing incident, the district court must resolve the factual dispute." *Ibid.* (quoting *Melo*, 13 F. 3d, at 747).

The Sixth Circuit also vacated the District Court's order remanding the case to the state court. Section 2679(d)(2), the Court of Appeals stressed, instructs that the "certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal." The court read that instruction to proscribe shuttling cases back to state courts and, instead, to require district court adjudication of the controversy even when a Westfall Act certification is rejected and, correspondingly, substitution of the United States as defendant is denied. 422 F. 3d, at 365. On that issue too, the Court of Appeals noted a division among the Circuits. Compare *Borneman* v. *United States*, 213 F. 3d 819, 826 (CA4 2000); *Garcia* v. *United States*, 88 F. 3d 318, 325–327 (CA5 1996); and *Aliota* v. *Graham*, 984 F. 2d 1350, 1356 (CA3 1993) (holding that a district court lacks authority to remand a case removed under § 2679(d)(2)), with *Haddon* v. *United States*, 68 F. 3d 1420, 1427 (CADC 1995); and *Nasuti* v. *Scannell*, 906 F. 2d 802, 814, n. 17 (CA1 1990) (holding remand proper when district court rejects the Attorney General's certification). We granted certiorari. 547 U. S. 1126 (2006).

II

We consider first the Court of Appeals' jurisdiction to review the District Court's disposition of this case. We address in turn the questions whether the appellate court had jurisdiction to review (1) the order rejecting the Attorney

General's certification and denying substitution of the United States as defendant, and (2) the order remanding the case to the state court.

A

The District Court's rejection of certification and substitution effectively denied Haley the protection afforded by the Westfall Act, a measure designed to immunize covered federal employees not simply from liability, but from suit. See § 2(a)(5), 102 Stat. 4563; *Lamagno*, 515 U. S., at 425–426; H. R. Rep. No. 100–700, p. 4 (1988). Under the collateral order doctrine of *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949), this ruling qualifies as a reviewable final decision within the compass of 28 U. S. C. § 1291.[7]

Meeting the three criteria of *Cohen*, the District Court's denial of certification and substitution conclusively decided a contested issue, the issue decided is important and separate from the merits of the action, and the District Court's disposition would be effectively unreviewable later in the litigation. 337 U. S., at 546. See *Mitchell* v. *Forsyth*, 472 U. S. 511, 525–527 (1985) (holding that district court rejection of a defendant's qualified immunity plea is immediately appealable under the *Cohen* doctrine because suit immunity "is effectively lost if a case is erroneously permitted to go to trial" against the immune official). As cogently explained by the Fifth Circuit in *Mitchell* v. *Carlson*, 896 F. 2d 128, 133 (1990), retaining the federal employee as a party defendant

> "effectively denie[s] [him] immunity from suit if [he] was entitled to such immunity under the Westfall Act. Under the Act, once the United States Attorney certifies that the federal employee acted within the scope of [his] employment, the plaintiff properly can proceed only against the United States as defendant. The federal employee remains immune from suit. By [rejecting the Attorney General's certification], the district court sub-

[7] Section 1291 provides that "[t]he courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts."

> ject[s] [the employee] to the burden of defending a suit . . . , a burden from which [the Westfall Act spares him]."

Tellingly, the Courts of Appeals are unanimous in holding that orders denying Westfall Act certification and substitution are amenable to immediate review under *Cohen*. See *Woodruff* v. *Covington*, 389 F. 3d 1117, 1124 (CA10 2004); *Mathis* v. *Henderson*, 243 F. 3d 446, 448 (CA8 2001); *Borneman*, 213 F. 3d, at 826 (CA4); *Lyons* v. *Brown*, 158 F. 3d 605, 607 (CA1 1998); *Taboas* v. *Mlynczak*, 149 F. 3d 576, 579 (CA7 1998); *Coleman* v. *United States*, 91 F. 3d 820, 823 (CA6 1996); *Flohr* v. *Mackovjak*, 84 F. 3d 386, 390 (CA11 1996); *Kimbro*, 30 F. 3d, at 1503 (CADC); *Aliota*, 984 F. 2d, at 1354 (CA3); *Pelletier* v. *Federal Home Loan Bank of San Francisco*, 968 F. 2d 865, 873 (CA9 1992); *McHugh*, 966 F. 2d, at 69 (CA2); *Carlson*, 896 F. 2d, at 133 (CA5). We confirm that the Courts of Appeals have ruled correctly on this matter.

B

In our order granting certiorari we asked the parties to address, in addition to the issues presented in the petition, this further question: Did the Court of Appeals have jurisdiction to review the District Court's remand order, notwithstanding 28 U. S. C. §1447(d)'s declaration that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise"? In answering this question, we also resolve the second question presented in the petition for certiorari—whether the Westfall Act's rule against remanding actions removed pursuant to §2679(d)(2) applies when the federal court determines that the United States should not be substituted as defendant in place of the federal employee. Our disposition is informed by, and tracks, the Third Circuit's reasoning in *Aliota*, 984 F. 2d, at 1354–1357.

We begin with the provision we asked the parties to address: §1447(d). That provision states in relevant part: "An order remanding a case to the State court from which it was

removed is not reviewable on appeal or otherwise . . . ." In *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336 (1976), we held that the preceding subsection, § 1447(c), confined § 1447(d)'s scope. Under § 1447(d), the Court explained, "only remand orders issued under § 1447(c) and invoking the [mandatory] grounds specified therein—that removal was improvident and without jurisdiction—are immune from review." *Id.*, at 346.[8] *Thermtron* had been properly removed to the federal court. The sole reason the District Court gave for remanding it was that court's crowded docket. This Court held the remand order reviewable, observing that § 1447(c) could not sensibly be read to confer on the district courts "carte blanche authority . . . to revise the federal statutes governing removal." *Id.*, at 351. See also *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706 (1996) (holding abstention-based remand order immediately appealable). But see *Gravitt* v. *Southwestern Bell Telephone Co.*, 430 U. S. 723 (1977) *(per curiam)* (holding unreviewable a remand order purporting to rest on a ground within the scope of § 1447(c)).

The United States urges us to apply *Thermtron* and hold the remand order in this case reviewable because that order was not based on a ground specified in § 1447(c). To determine whether *Thermtron* controls, we must start with an examination of the Westfall Act's design, particularly its prescriptions regarding the removal and remand of actions filed in state court.

As earlier noted, see *supra*, at 229–230, the Act grants the Attorney General authority to certify that a federal employee named defendant in a tort action was acting within

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[8] At the time *Thermtron* was decided, § 1447(c) required a district court to remand a case if it appeared that the case had been "removed improvidently and without jurisdiction." 28 U. S. C. § 1447(c) (1970 ed.). Section 1447(c) now provides that a case must be remanded if "it appears that the district court lacks subject matter jurisdiction."

the scope of his or her employment at the time in question. § 2679(d)(1), (2). If the action is commenced in a federal court, and the Attorney General certifies that the employee "was acting within the scope of his office or employment at the [relevant] time," the United States must be substituted as the defendant. § 2679(d)(1). If the action is launched in a state court, and the Attorney General makes the same certification, the action "shall be removed" to the appropriate federal district court, and again the United States must be substituted as the defendant. § 2679(d)(2). Of prime importance to our decision, § 2679(d)(2) concludes with the command: "Th[e] certification of the Attorney General shall *conclusively establish scope of office or employment for purposes of removal.*" (Emphasis added.)

This directive markedly differs from Congress' instruction for cases in which the Attorney General "refuse[s] to certify scope of office or employment." § 2679(d)(3). In that event, the defendant-employee may petition the court in which the action was instituted to make the scope-of-employment certification. If the complaint was filed in a state court, the Attorney General *may* remove the case to the appropriate federal court, but he is not obliged to do so. *Ibid.* If the court, state or federal, issues the certification, "the United States shall be substituted as the party defendant." *Ibid.* If removal has occurred, and thereafter "the district court determines that the employee was not acting within the scope of his office or employment, the action . . . *shall be remanded to the State court.*" *Ibid.* (emphasis added).

The Act's distinction between removed cases in which the Attorney General issues a scope-of-employment certification, and those in which he does not, leads us to conclude that Congress gave district courts no authority to return cases to state courts on the ground that the Attorney General's certification was unwarranted. Absent certification, § 2679(d)(3) directs that the case must be remanded to the

state court in which the action commenced. In contrast, when the Attorney General certifies scope of employment, his certificate "conclusively establish[es] scope of office or employment *for purposes of removal*." § 2679(d)(2) (emphasis added). Section 2679(d)(2) does not preclude a district court from resubstituting the federal official as defendant *for purposes of trial* if the court determines, postremoval, that the Attorney General's scope-of-employment certification was incorrect. For purposes of establishing a forum to adjudicate the case, however, § 2679(d)(2) renders the Attorney General's certification dispositive.[9]

Were it open to a district court to remand a removed action on the ground that the Attorney General's certification was erroneous, the final instruction in § 2679(d)(2) would be weightless. The Attorney General's certification would not "conclusively establish scope of office or employment" for either trial or removal. Instead, the Attorney General's scope certification would supply only a tentative basis for removal, rather than a conclusive one. In *Lamagno*, the Court unanimously agreed that Congress spoke unambiguously on this matter: Congress adopted the "conclusiv[e] . . . for purposes of removal" language to "foreclose needless shuttling of a case from one court to another." 515 U. S., at 433, n. 10; see *id.*, at 440 (SOUTER, J., dissenting) ("[T]here is nothing equivocal about [§ 2679(d)(2)'s] provision that once a state tort action has been removed to a federal court after a certification by the Attorney General, it may never be remanded to the state system.").

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[9] As explained by the Third Circuit in *Melo* v. *Hafer*, 912 F. 2d 628, 641 (1990), "[t]here are significant policy reasons why Congress would choose to give the government an unchallengeable right to have a federal forum for tort suits brought against its employees." But Congress' endeavor to secure that right does not mean that Congress also intended to render unreviewable substitution of the United States as defendant in place of the employee. See *ibid.*; cf. *Gutierrez de Martinez* v. *Lamagno*, 515 U. S. 417, 430–434 (1995).

With the Westfall Act's provisions on removal of actions filed in state court in clear view, we return to the question whether an order remanding a case removed pursuant to § 2679(d)(2) is reviewable. *Thermtron* held that § 1447(d) must be read together with § 1447(c). There is stronger cause, we conclude, to hold that § 1447(c) and (d) must be read together with the later enacted § 2679(d)(2). Both § 1447(d) and § 2679(d)(2) are antishuttling provisions. Each aims to prevent "prolonged litigation of questions of jurisdiction of the district court to which the cause is removed." *United States* v. *Rice*, 327 U. S. 742, 751 (1946). Section 2679(d)(2) is operative when the Attorney General certifies scope of employment, triggering removal of the case to a federal forum. At that point, § 2679(d)(2) renders the federal court exclusively competent and categorically precludes a remand to the state court.

The command that the Attorney General's certification "shall conclusively establish scope of office or employment for purposes of removal," § 2679(d)(2), differentiates certified Westfall Act cases from the typical case remanded for want of subject-matter jurisdiction. Ordinarily, when the plaintiff moves to remand a removed case for lack of subject-matter jurisdiction, the federal district court undertakes a threshold inquiry; typically the court determines whether complete diversity exists or whether the complaint raises a federal question. In Attorney General certified Westfall Act cases, however, no threshold determination is called for; the Attorney General's certificate forecloses any jurisdictional inquiry. By declaring the Attorney General's certification "conclusive" as to the federal forum's jurisdiction, Congress has barred a district court from passing the case back to the state court where it originated based on the court's disagreement with the Attorney General's scope-of-employment determination.

Our decision that § 2679(d)(2) leaves the district court without authority to send a certified case back to the state

court scarcely means that whenever the district court misconstrues a jurisdictional statute, appellate review of the remand is in order. Such an exception would, of course, collide head on with § 1447(d), and with our precedent. See, *e. g.*, *Things Remembered, Inc.* v. *Petrarca*, 516 U. S. 124, 127–128 (1995). Only in the extraordinary case in which Congress has ordered the intercourt shuttle to travel just one way—from state to federal court—does today's decision hold sway.

In short, of the two antishuttling commands, § 1447(d) and § 2679(d)(2), only one can prevail. We hold that § 2679(d)(2) controls. Tailor-made for Westfall Act cases, § 2679(d)(2) is a forum-selecting rule Congress made "conclusive," beyond the ken of district courts to revise. See *Thermtron*, 423 U. S., at 351.

C

In *Lamagno*, the Court considered, but did not definitively resolve, the question whether Article III permits "[t]reating the Attorney General's certification as conclusive for purposes of removal but not for purposes of substitution." 515 U. S., at 434. It was argued in that case that if certification is rejected and substitution denied "because the federal court concludes that the employee acted outside the scope of his employment, and if the tort plaintiff and the [defendant-employee] are not of diverse citizenship, . . . then the federal court will be left with a case without a federal question to support the court's subject-matter jurisdiction." *Id.*, at 434–435. *Lamagno* was an action commenced in federal court on the basis of diversity of citizenship, so there was in that case "not even the specter of an Article III problem." *Id.*, at 435.

In the case before us, the question would arise only if, after full consideration, the District Court determines that Haley in fact engaged in the tortious conduct outside the scope of his employment charged in Osborn's complaint. At that point, however, little would be left to adjudicate, at least as to Haley's liability. Because a significant federal question

(whether Haley has Westfall Act immunity) would have been raised at the outset, the case would "aris[e] under" federal law, as that term is used in Article III. See *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 493 (1983). Even if only state-law claims remained after resolution of the federal question, the District Court would have discretion, consistent with Article III, to retain jurisdiction. See *Carnegie-Mellon Univ.* v. *Cohill*, 484 U. S. 343, 350–351 (1988) (when federal character of removed case is eliminated while the case is *sub judice*, court has discretion to retain jurisdiction, to remand, or to dismiss); cf. *Mine Workers* v. *Gibbs*, 383 U. S. 715, 725 (1966) (pendent jurisdiction may be exercised when federal and state claims have a "common nucleus of operative fact" and would "ordinarily be expected to [be tried] all in one judicial proceeding"). See also 28 U. S. C. § 1367 ("Supplemental jurisdiction"). "[C]onsiderations of judicial economy, convenience and fairness to litigants," *Gibbs*, 383 U. S., at 726, make it reasonable and proper for a federal court to proceed to final judgment, once it has invested time and resources to resolve the pivotal scope-of-employment contest. Thus, under the precedent that guides us, the Westfall Act's command that a district court retain jurisdiction over a case removed pursuant to § 2679(d)(2) does not run afoul of Article III.

III

With the jurisdictional issues resolved, we reach the principal question raised by petitioner Osborn: whether the United States Attorney validly certified that Haley "was acting within the scope of his employment . . . at the time of the conduct alleged in the complaint." Luber App. 23. We note first that the certificate is formally in order; it closely tracks the language of the Westfall Act. See § 2679(d)(2) (authorizing certification "that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose"). In

Lamagno, we held that the Attorney General's certification is "the first, but not the final word" on whether the federal officer is immune from suit and, correlatively, whether the United States is properly substituted as defendant. 515 U. S., at 432. A plaintiff may request judicial review of the Attorney General's scope-of-employment determination, as Osborn did here.

As earlier recounted, see *supra*, at 234, the District Court initially accepted Osborn's allegations as true because it believed that the United States did not dispute them. Applying Kentucky law, that court determined that "Haley's alleged actions occurred outside the scope of his employment." App. to Pet. for Cert. 24a. In a motion for reconsideration, the Government clarified that, far from admitting Osborn's allegations, it disputed the very occurrence of the harm-causing conduct Osborn alleged. In support of the motion, the Government submitted affidavits from Haley and Luber denying that they engaged in the conduct ascribed to them in Osborn's complaint. The Government contended that Haley remained within the proper bounds of his employment at the relevant time and place because the wrongdoing Osborn alleged never happened.

The Government's reconsideration motion asked the District Court to resolve the factual dispute, *i. e.*, to determine whether, as the complaint alleged, Haley prevailed upon Luber to discharge Osborn, or whether, as Haley asserted, he never communicated with Luber about Osborn's LBLA employment. The court did not grant the Government's request for resolution of the factual dispute. Instead, it held the Westfall Act certification invalid precisely because the Government denied that Haley engaged in harm-causing conduct.

Two Courts of Appeals have held that Westfall Act certification is improper when the Government denies the occurrence of the alleged injury-causing action or episode. See *Wood*, 995 F. 2d, at 1123 (CA1); *McHugh*, 966 F. 2d, at 74–75

(CA2). The Sixth Circuit, in this case, and several other Courts of Appeals have held that a plaintiff's allegation of conduct beyond the scope of a federal official's employment does not block certification where the Government contends that the alleged tortious conduct did not occur. See *Heuton*, 75 F. 3d, at 360 (CA8); *Kimbro*, 30 F. 3d, at 1508 (CADC); *Melo*, 13 F. 3d, at 746–747 (CA3). We agree that Westfall Act certification is proper when a federal officer charged with misconduct asserts, and the Government determines, that the incident or episode in suit never occurred.

A

The Westfall Act grants a federal employee suit immunity, we reiterate, when "acting within the scope of his office or employment at the time of the incident out of which the claim arose." §2679(d)(1), (2). That formulation, we are persuaded, encompasses an employee on duty at the time and place of an "incident" alleged in a complaint who denies that the incident occurred. See *Wood*, 995 F. 2d, at 1134 (joint opinion of Coffin, Selya, and Boudin, JJ., dissenting) ("[S]urely the statute applies with the same force whether a postal service driver says that he did not hit the plaintiff's car or that he did so but was not at fault."); *Melo*, 13 F. 3d, at 747. And just as the Government's certification that an employee "was acting within the scope of his employment" is subject to threshold judicial review, *Lamagno*, 515 U. S., at 434, so a complaint's charge of conduct outside the scope of employment, when contested, warrants immediate judicial investigation. Were it otherwise, a federal employee would be stripped of suit immunity not by what the court finds, but by what the complaint alleges.[10]

[10] In an opinion resembling his majority opinion in *Wood* v. *United States*, 995 F. 2d 1122 (CA1 1993) (en banc), JUSTICE BREYER takes the view that the Attorney General may issue a Westfall Act certification if he contests the plaintiff's account of the episode-in-suit, but he must "assume some kind of incident" in order to certify. *Post*, at 256 (opinion

In sum, given the purpose of the Westfall Act to shield covered employees not only from liability but from suit, it is altogether appropriate to afford protection to a "negligent . . . employee . . . as a matter of course." *Wood*, 995 F. 2d, at 1135 (joint opinion of Coffin, Selya, and Boudin, JJ., dissenting). But it would make scant sense to read the Act as leaving an employee charged with an intentional tort[11] to fend for himself when he denies wrongdoing and asserts he "engaged only in proper behavior occurring wholly within the scope of his office or employment." *Ibid.* See also *Heuton*, 75 F. 3d, at 360 ("[I]t is illogical to assume that Congress intended to protect guilty employees but desert innocent ones.").[12]

Willingham v. *Morgan*, 395 U. S. 402 (1969), in which the Court construed the federal officer removal statute, 28

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concurring in part and dissenting in part). Thus he would not permit "purely incident-denying certifications," and he places the certification here in that category. *Ibid.* We agree with the *Wood* dissenters' appraisal of JUSTICE BREYER's distinction between incident-denying and incident-recharacterizing certifications: That approach would require district courts "to engage in difficult, time-wasting controversies . . . about precisely *which facts* pertaining to the scope of employment issue are for the district judge and which are for the jury." 995 F. 2d, at 1136, and n. 7 (joint opinion of Coffin, Selya, and Boudin, JJ., dissenting). Accord *Kimbro* v. *Velten*, 30 F. 3d 1501, 1507 (CADC 1994) ("[I]t would be impossible . . . to draw a distinction between a characterization of an incident and whether or not it actually occurred.").

[11] See *id.*, at 1505 (observing that the question here presented "tend[s] to arise in cases of alleged intentional torts").

[12] Under JUSTICE BREYER's view, when, in fact, "*nothing* involving the employee happened at all . . . no Westfall Act immunity would be available." *Post*, at 261. He thinks this "is just as it should be." *Ibid.* We disagree. Congress did not, and sensibly should not, command that innocent employees be left outside the Westfall Act's grant of suit immunity. "Congress' statute and its policy," we agree, "both look in the opposite direction." *Wood*, 995 F. 2d, at 1136 (joint opinion of Coffin, Selya, and Boudin, JJ., dissenting).

U. S. C. § 1442, supports our reading of the Westfall Act.[13] Section 1442(a)(1) allows an officer of the United States to remove a civil action commenced in state court if the officer is "sued in an official or individual capacity for any act under color of such office." In *Willingham*, a federal inmate sued two federal prison officials in state court, alleging that they had assaulted, beaten, and tortured him. 395 U. S., at 403. The defendants removed pursuant to § 1442(a)(1), and the District Court upheld their defense of official immunity. The Tenth Circuit reversed, reading § 1442(a)(1) to permit removal only when a defendant "exclude[s] the possibility that the suit is based on acts or conduct not justified by his federal duty." *Morgan* v. *Willingham*, 383 F. 2d 139, 141 (1967). We rejected that narrow construction of the statute and held § 1442 "broad enough to cover all cases where federal officers can raise a colorable defense arising out of the duty to enforce federal law." 395 U. S., at 406–407.

The plaintiff in *Willingham* disputed that the defendant federal officials had acted under color of office. He alleged that they "had been acting on a frolic of their own which had no relevancy to their official duties as employees or officers of the United States." *Id.*, at 407 (internal quotation marks omitted). The Court held that the officers "should have the opportunity to *present their version of the facts* to a federal, not a state, court." *Id.*, at 409 (emphasis added).

We see no reason to conclude that the Attorney General's ability to remove a suit to federal court under § 2679(d)(2), unlike a federal officer's ability to remove under § 1442, should be controlled by the plaintiff's allegations. In *Willingham*, the federal officer's "relationship to [the plaintiff] derived solely from their official duties." *Ibid.* Similarly

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[13] The notice of removal in this case invoked § 1442 as well as § 2679. In the Sixth Circuit, however, the Government did not urge § 1442 as a separate ground for reversing the District Court.

here, Haley interacted with Osborn and Luber only through his employment as a Forest Service officer.[14] For purposes of removal under § 1442(a), the defendants in *Willingham* were not required to accept the truth of the plaintiff's allegations that they were "on a frolic of their own," *id.*, at 407 (internal quotation marks omitted), and had tortured plaintiff "out of malice," 383 F. 2d, at 140 (internal quotation marks omitted). So here, for purposes of removal under § 2679(d)(2), Haley and the Government were not required to accept as true Osborn's allegations that Haley "maliciously induced" her dismissal from LBLA "in retaliation for plain-

[14] In the context of § 1442, we have held that, to qualify for removal, a federal official must show "a nexus . . . between the charged conduct and asserted official authority." *Jefferson County* v. *Acker*, 527 U. S. 423, 431 (1999) (internal quotation marks omitted). We need not today decide whether qualification for Westfall Act immunity is similarly limited, for in this case, a nexus plainly exists connecting the incident Osborn alleged and Haley's federal employment. We note, however, that nothing in our opinion commits the Court to the view that Westfall Act immunity is available in fanciful situations like the one JUSTICE BREYER hypothesizes, *post*, at 256, in which the plaintiff's allegations are wholly unrelated to the defendant's federal employment.

JUSTICE BREYER posits the case of a Yellowstone Park forest ranger accused of misdeeds at Coney Island. He says we would find Westfall Act immunity—more accurately, we would uphold Westfall Act certification—even if the ranger's "presen[ce] on Coney Island must have been . . . on a frolic of his own." *Ibid.* If JUSTICE BREYER is imagining a case in which the ranger was in fact on a frolic at Coney Island, but the Attorney General nevertheless issued a Westfall Act certificate, we would not approve the certification. In that imaginary case, there would be no sense in which the ranger was acting within the scope of his employment *at the time* of the incident charged in the plaintiff's complaint. If, instead, JUSTICE BREYER has in mind a ranger accused of frolicking at Coney Island, when all the while he stayed close to his desk at Yellowstone Park, then JUSTICE BREYER is correct: Westfall Act immunity might be available under our approach. If such a case ever shows up in a federal court, however, the district judge might be called upon to determine whether removal and substitution under § 2679(d)(2) are limited by a nexus requirement similar to the one that limits removal under § 1442.

tiff filing a veterans' preference inquiry." Complaint ¶ 29, Luber App. 7. Haley, like the defendant in *Willingham*, may have been on a frolic of his own as Osborn alleged, and therefore may not be entitled to immunity. But like the officers in *Willingham*, he should have the opportunity to "present [his] version of the facts to a federal . . . court." 395 U. S., at 409.

B

Tugging against our reading of the Westfall Act, we recognize, is a "who decides" concern. If the Westfall Act certification must be respected unless and until the District Court determines that Haley, *in fact*, engaged in conduct beyond the scope of his employment, then Osborn may be denied a jury trial. Compare *Wood*, 995 F. 2d, at 1126, 1130, with *id.*, at 1134–1138 (joint opinion of Coffin, Selya, and Boudin, JJ., dissenting). Should the District Court find that Haley did not maliciously induce Luber to discharge Osborn, but instead interacted with Luber and Osborn only within the proper bounds of his employment, Osborn will lose on the merits with no access to a jury of her peers.[15] "This is not a small objection," for the issue "that goes to the heart of the merits, as well as to the validity of the certificate," will likely turn on the credibility of Osborn, Haley, and Luber,

[15] The overlap of certification validity and the merits of the plaintiff's claim, evident here, is uncommon. It is unlikely to occur when the plaintiff alleges negligent conduct. The question whether a federal driver was acting within the scope of his employment at the time of an accident, for example, can generally be answered without simultaneously determining whether the federal employee drove negligently or carefully. And even when the plaintiff alleges an intentional tort, it may be possible to resolve the scope-of-employment question without deciding the merits of the claim. If a plaintiff charges a federal employee with sexual assault, for example, upon determining that there was sexual contact, a district court could find that the employee acted outside the scope of his duties, leaving the question whether the contact was consensual for jury resolution.

and credibility "may be well suited for jury resolution." See *id.*, at 1136–1137.[16]

Under the Westfall Act, however, Congress supplanted the jury in covered cases. See §2679(d)(1)–(3). Upon certification, the action is "deemed to be . . . brought against the United States," *ibid.*, unless and until the district court determines that the federal officer originally named as defendant was acting outside the scope of his employment. The Seventh Amendment, which preserves the right to a jury trial in suits at common law, we have held, does not apply to proceedings against the sovereign. *Lehman* v. *Nakshian*, 453 U. S. 156 (1981). See also §2402 (actions against the United States ordinarily "shall be tried by the court without a jury"). Thus, at the time the district court reviews the Attorney General's certification, the plaintiff has no right to a jury trial. See *Kimbro*, 30 F. 3d, at 1509, n. 4.[17]

The Westfall Act's core purpose also bears on the appropriate trier of any facts essential to certification. That purpose is to relieve covered employees from the cost and effort of defending the lawsuit, and to place those burdens on the Government's shoulders. See *supra*, at 238–239.

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[16] But cf. 995 F. 2d, at 1137 (observing that "[i]n the ordinary tort claim arising when a government driver negligently runs into another car, jury trial is precisely what is lost to a plaintiff when the government is substituted for the employee").

[17] We do not address the case in which the Attorney General refuses certification. In that event, §2679(d)(3) allows the named defendant to "petition the court to find and certify that [he] was acting within the scope of his . . . employment." However, the Westfall Act gives the named defendant no right to remove an uncertified case. But see 28 U. S. C. §1442(a)(1). That right is accorded to the Attorney General only. Because the scope determination would be made in such a case before any substitution of the United States as defendant takes place, it is arguable that a jury trial of that issue would be required if the case is before a federal court. If the case was brought in a state court and the Attorney General declines to remove, the Seventh Amendment would not figure in the case, for it is inapplicable to proceedings in state court. *Minneapolis & St. Louis R. Co.* v. *Bombolis*, 241 U. S. 211, 217 (1916).

Immunity-related issues, the Court has several times instructed, should be decided at the earliest opportunity. See, *e. g.*, *Hunter* v. *Bryant*, 502 U. S. 224, 228 (1991) *(per curiam)* ("Immunity ordinarily should be decided by the court long before trial."); *Anderson* v. *Creighton*, 483 U. S. 635, 646, n. 6 (1987) ("[I]mmunity questions should be resolved at the earliest possible stage of litigation.").[18]

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Sixth Circuit is

Affirmed.

JUSTICE SOUTER, concurring in part and dissenting in part.

I join the Court's opinion except for Parts II–B and II–C. Title 28 U. S. C. § 1447(d) provides, with one exception not relevant here, that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." In sanctioning appellate review notwithstanding § 1447(d), the Court relies on its determination that

[18] JUSTICE BREYER suggests that, with respect to immunity defenses, our "reading of the Westfall Act works a major change in th[e] [ordinary] fact/law relationship." *Post*, at 259. Nothing in our opinion touches on that relationship in the typical case in which a defendant official raises a defense of absolute or qualified immunity. We simply observe that the Westfall Act grants federal employees a species of immunity, and that, under our jurisprudence, immunity-related questions should be resolved at the earliest opportunity. JUSTICE BREYER is right, however, to this extent. We recognize that judges have a greater factfinding role in Westfall Act cases than they traditionally have in other immunity contexts. The Act makes that inevitable. When Westfall Act immunity is in dispute, a district court is called upon to decide who the proper defendant is: the named federal employee, or the United States. That decision cannot be left for jury resolution late in proceedings without undermining the Westfall Act's very purpose: to shift the burden of defending the suit to the United States whenever the defendant-employee was, at the relevant time, acting within the scope of his employment.

Congress, through §2679(d)(2), has prohibited remand in cases like this one, in order to give effect to the conclusive character of the Attorney General's certification on the issue of removal jurisdiction. But as we recently held, "'review is unavailable no matter how plain the legal error in ordering the remand.'" *Kircher* v. *Putnam Funds Trust*, 547 U. S. 633, 642 (2006) (quoting *Briscoe* v. *Bell*, 432 U. S. 404, 414, n. 13 (1977)). Thus, rather than allowing §2679(d)(2) to trump §1447(d), I would reaffirm the rule that a district court's remand order is unreviewable even if it is based on an erroneous understanding of the district court's jurisdiction.[1] But I would not otherwise limit the Attorney General's (or the employee's) efforts to give the intended effect to the certification prior to any remand that might be ordered.

I agree with the Court, therefore, that the Court of Appeals had jurisdiction to review the District Court's order resubstituting Haley as defendant. That order was not "[a]n order remanding a case to the State court from which it was removed," so by its own terms §1447(d) does not apply to review of that decision. Allowing review of a resubstitution order makes good on the promise of the Westfall Act: by permitting disaggregation of a remand order from a substantive determination about substitution that preceded it (in the manner exemplified by *Waco* v. *United States Fidelity & Guaranty Co.*, 293 U. S. 140 (1934)), it gives an employee-defendant a right to appeal any denial of the benefit of substituting the Government as defendant in costly litigation arising out of the employee's federal service.[2] The circum-

[1] The exception to §1447(d) created in *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336 (1976), for remands not authorized by §1447(c) does not apply here because the District Court remanded the case for lack of subject-matter jurisdiction, a ground enumerated in §1447(c).

[2] The circumstances of this case make it clear that *Waco* ought to endure as an exception to §1447(d), a question left open in *Kircher* v. *Putnam Funds Trust*, 547 U. S. 633, 645, n. 13 (2006). A contrary rule would preclude appellate review not only of the remand order itself, but also of the refusal to substitute the Government as defendant.

stances in which the Westfall Act was adopted, responding as it did to a series of our decisions that Congress saw as having "seriously eroded the common law tort immunity previously available to Federal employees," 102 Stat. 4563, note following 28 U. S. C. § 2671, point to the importance Congress placed on giving a federal employee a full opportunity to seek this protection. Incidentally, of course, my reading of the statutes can give an appellate court the opportunity to correct a district court's erroneous understanding of the legitimacy of removal before any remand is effected, making it very unlikely that a mistakenly premised remand order will be carried out. If a district court resisted edification, however, the remand order would be conclusive against appeal, in accord with § 1447(d). See *Kircher*, *supra*, at 642.

In sum, my resolution of this case is a pair of half-loaves. The policy of avoiding litigation over remands is tempered by allowing appeals on the important matter of substitution. The policy behind making the Attorney General's certification conclusive is qualified by insulating a remand order from review, no matter how erroneous its jurisdictional premise. Neither policy has it all, but each gets something.

I would remand this case to the Court of Appeals for proceedings consistent with this understanding.

JUSTICE BREYER, concurring in part and dissenting in part.

I agree with the Court's jurisdictional analysis and its disposition of the District Court's remand order and so join Parts I and II of the Court's opinion. But I dissent from Part III. I continue to believe that the Westfall Act permits the Attorney General to certify only when accepting, at least conditionally, the existence of some kind of "incident." But where the incident, if it took place at all, *must have* fallen outside the scope of employment, the Act does not permit certification. See *Wood* v. *United States*, 995 F. 2d 1122 (CA1 1993) (en banc).

Here, the Attorney General did claim, in the alternative, that *if* an incident took place (*i. e.*, if the federal employee Haley spoke to Osborn's employer with respect to Osborn's employment), any such incident would have fallen within the scope of Haley's employment. But, for procedural reasons, that alternative claim is not before us. *Ante*, at 235–236, n. 6 (majority opinion). Hence I must consider this case as if it were quite a different kind of case, one in which what took place was either an incident *outside the scope of employment* or no incident at all. Consider, for example, an aggravated sexual assault, a theft of personal property, or an auto accident on Coney Island where the Government employee, say, a Yellowstone Park forest ranger, if present on Coney Island must have been there on a frolic of his own. The majority's approach finds Westfall Act immunity in cases of this kind. I would not.

For one thing, the Act's language suggests that it does not apply in such circumstances. The statute says that the Attorney General must certify that the employee "was acting within the scope of his office or employment *at the time of the incident out of which the claim arose.*" 28 U. S. C. § 2679(d)(2) (emphasis added). The italicized words, read naturally, assume some kind of incident, the *characterization* of which (*e. g.*, as within the scope of employment) determines whether immunity attaches. By way of contrast, permitting purely incident-denying certifications, as the majority does, can only be squared with the Act's text if the Attorney General is required to supply the reviewing court with proof of what the employee *was* doing (and that such activities *were* within the scope of employment) "at the time of the incident"—a showing that would prove quite difficult in a case such as this, where the plaintiff has alleged that the tort was committed at some unknown time over a period of days, or weeks, or even longer.

For another, there is nothing to suggest the Westfall Act sought to provide immunity for tort claims necessarily fall-

ing outside the scope of federal employment. As its popular name suggests, the Act focused upon *Westfall* v. *Erwin*, 484 U. S. 292 (1988), an earlier case in which the Court considered whether, to obtain immunity from state-law tort suits, a federal official had to show not just that his conduct was "within the scope of [his] employment," but also that it was "*discretionary in nature*." *Id.*, at 295 (emphasis added). The Court answered "yes." It held that a federal employee was *not* immune from a state-law tort suit, even for simple negligence, unless the employee could also show that his conduct was discretionary.

The Westfall Act basically seeks to overturn this holding. As this Court has said, "[w]hen Congress wrote the Westfall Act . . . , the legislators had one purpose firmly in mind [namely] to override *Westfall* v. *Erwin*." *Gutierrez de Martinez* v. *Lamagno*, 515 U. S. 417, 425 (1995). The House Judiciary Committee wrote that the Act's "functional effect . . . is to return Federal employees to the status they held prior to the *Westfall* decision." H. R. Rep. No. 100–700, p. 4 (1988). And that "status," many thought, was an immunity that applied to nondiscretionary, as well as discretionary, actions that fell "within the scope" of the employee's "office or employment." 28 U. S. C. §2679(b)(1); H. R. Rep. No. 100–700, at 4.

In a word, the Act seeks to *maintain* the scope of pre-*Westfall* immunity *minus Westfall's "discretionary function" limitation*. That purpose does not encompass an extension of immunity to all-or-nothing conduct, *i. e.*, those serious assaults or personal "frolics" that, *if they took place at all*, could not possibly have fallen within the scope of the employee's "office or employment."

Further, to try to bring the latter type of conduct within the scope of the Act's immunity creates a series of anomalies. As the Court recognizes, its interpretation may limit the plaintiff's ability to obtain jury consideration of factual matters critical to his or her case. Indeed, *any* Government

employee defendant, including a defendant whom the Attorney General does *not* want to defend, can ask the judge to issue a certificate. §2679(d)(3). On the Court's view of the statute, the issuance of the certificate could depend upon whether, for example, the aggravated sexual assault took place at all or whether the defendant was at Yellowstone or Coney Island at the relevant times. And, in deciding these questions (as the judge would have to do to determine whether the certificate should issue), the judge, not the jury, would decide the main issue in the case. (The Court declines to address the effect of its analysis on §2679(d)(3). *Ante*, at 252, n. 17. But the relevant language in this provision is virtually identical to the language at issue in this case, see §2679(d)(2), so one cannot seriously suggest that the Act by its own terms affords employees any narrower a basis for seeking certification than it affords the Attorney General.)

It is highly unusual to permit special, speedy judge fact-finding where immunity is at issue. Ordinarily, when a party asserts an immunity defense, *i. e.*, an "entitlement not to stand trial *under certain circumstances*," *Mitchell* v. *Forsyth*, 472 U. S. 511, 525 (1985) (emphasis added), special immunity-related procedures focus, not upon factfinding, but upon the proper *legal characterization* of the facts as given. Where the parties' immunity-related disagreement amounts to a dispute about the *law*, namely, whether the particular set of facts alleged by the plaintiff does, or does not, fall within the immunity's legal scope, the defendant is entitled to a quick determination of the legal question by the trial judge and, if necessary, an immediate interlocutory appeal. *Id.*, at 526, 530. See *Nixon* v. *Fitzgerald*, 457 U. S. 731, 742–743 (1982); see also *Helstoski* v. *Meanor*, 442 U. S. 500, 507–508 (1979). But where that disagreement amounts to a dispute about the *facts*, immunity law does *not* ordinarily entitle the defendant to special procedural treatment. Rather, the defendant must take the *facts* as the plaintiff

asserts them. Like any other defendant, he can move for summary judgment. *Mitchell*, *supra*, at 526; *Anderson* v. *Creighton*, 483 U. S. 635, 646–647, n. 6 (1987). But if the plaintiff provides sufficient evidence to survive summary judgment, the defendant must win the case at trial.

Thus ordinarily an immunity defense provides special procedural treatment only for a defendant's legal claim that the facts *taken as the plaintiff asserts them* (or *taken as the assertions have survived a motion for summary judgment*) fall within the scope of the immunity. It does not provide special treatment for disputes about the facts. See, *e. g.*, *Johnson* v. *Jones*, 515 U. S. 304, 319–320 (1995) (defendant raising immunity defense "may not appeal a district court's summary judgment order insofar as that order determines whether or not the pretrial record sets forth a 'genuine' issue of fact for trial"). The Court's reading of the Westfall Act works a major change in this fact/law relationship. Under the Court's reading, the defendant will have the right to ask the judge to determine the facts, *i. e.*, to determine whether the events plaintiff says occurred did in fact happen. And that is so *even where the plaintiff has enough evidence to bring the case to the jury.*

The Court's reading of the Act proves even more anomalous in the case of a federal employee claiming an assault that violates both (a) state tort law and (b) federal civil rights law. Suppose that the defendant's sole defense is "mistaken identity." The defendant argues that nothing took place between him and the plaintiff, that at the relevant time he was working peacefully at his desk. Under the Court's reading, the defendant is entitled to have the *judge* decide the factual question; and, should the judge decide in his favor (in respect to the state-law tort claim), collateral estoppel likely means an end of the matter in respect to the federal civil rights claim, as well. Yet the Westfall Act explicitly *exempts* from its scope any claim of "violation of a federal statute" or the Federal Constitution. 28 U. S. C. § 2679(b)(2).

The Court rests much of its analysis on *Willingham* v. *Morgan*, 395 U. S. 402 (1969), but I do not think that case offers much support. *Willingham* addressed *only* a federal officer's right to remove a case to federal court (via § 1442(a)(1)). *Id.*, at 403. Once there, the officer could pursue traditional immunity defenses, *i. e.*, based on the facts as alleged by the plaintiff or as they survived summary judgment; that is all the Court could have meant when it said that officers "should have the opportunity to present their version of the facts to a federal, not a state, court," *id.*, at 409. Moreover, in *Mesa* v. *California*, 489 U. S. 121, 139 (1989), this Court held that "[f]ederal officer removal under 28 U. S. C. § 1442(a) must be predicated upon averment of a federal defense." Because the federal employee defendants in *Mesa* "ha[d] not and could not present an official immunity defense" to the charges against them, removal was improper under § 1442(a)(1). *Id.*, at 133. The majority reads the Westfall Act much more broadly than this Court read § 1442(a) in *Mesa*, permitting removal in cases where there is unquestionably no official immunity defense available (at least as such defenses have been understood by this Court until today). And in so doing, the majority opens wide the door not just to removal, which was all that was at issue in *Willingham* and *Mesa*, but, much more consequentially, to substituting a judge's factfinding for a plaintiff's jury trial right.

I do not claim that my own reading of the Westfall Act will totally eliminate the difficulties I have mentioned. But an interpretation that reads the Act's language more literally will minimize them, while also largely mitigating the problem of clever pleading with which the majority is rightly concerned, *ante*, at 248. The Act says the "Attorney General" must certify that the "employee was acting within the scope of his office or employment *at the time of the incident* out of which the claim arose." § 2679(d)(2) (emphasis added). As I have said, that language prevents the Attorney General

from denying that any "incident" at all occurred without at least adding in the alternative that any incident the plaintiff might be able to show falls within the employee's scope of employment regardless.

Thus, if a plaintiff claims an *intentional* touching (outside the scope of employment), the Attorney General is free to claim (a) there was no touching but (b) were the evidence to show a touching, it was accidental (within the scope of employment). Yet if the plaintiff accuses the employee, a Yellowstone Park ranger, of negligent driving on Coney Island, the Attorney General could not make a similar claim. (Nor could he likely do so in respect to an employee whom the plaintiff claims committed a serious sexual assault.) That is because if these latter incidents did happen, they must have fallen outside the scope of employment, while if they did not happen, then *nothing* involving the employee happened at all. In such cases no Westfall Act immunity would be available. And that is just as it should be.

This approach resembles, but differs in important respects from that of the First Circuit in *Wood*. In *Wood*, the First Circuit held that a judge reviewing a Westfall Act certificate could resolve factual conflicts as to "incident-describing and incident-characterizing facts," but must leave for the jury (if it came to that) disputes over whether any incident occurred at all. 995 F. 2d, at 1129. Here, I offer a compromise between *Wood* and the majority's more extreme approach. I would permit a judge reviewing a Westfall Act certificate to resolve *any* factual disputes relevant to whether the defendant was "acting within the scope of his office or employment," including, when necessary, determining whether the incident occurred at all. But I would only permit the judge to fulfill this factfinding function in those cases where the Attorney General (or the defendant employee, under §2679(d)(3)) can offer *some* plausible explanation of the alleged incident that would bring the defendant's actions within the scope of his federal office or employment.

The majority's approach, absent some undefined constraint that might be imposed in future cases, *ante*, at 250, n. 14, would permit factfinding by a judge (and, where the Attorney General requests, removal to federal court) in *any* state-law tort case involving a federal employee. I would permit judges to fulfill this rather extraordinary factfinding function only in those cases where the "injury or loss of property, or personal injury or death," for which the plaintiff seeks recovery *might* have "aris[en] or result[ed] from the negligent or wrongful act or omission of [the federal employee] while acting within the scope of his office or employment"—*i. e.*, where there is *some chance* the injury (if any) was caused by the kinds of actions for which the Act expressly grants employees immunity, under §2679(b)(1). This approach protects the innocent employee as well as the guilty, *ante*, at 248, but only in the class of lawsuits the Act can plausibly be read to cover.

Because the Court of Appeals interpreted the Act as does the Court, I would vacate its judgment. I would, however, permit the Court of Appeals to consider the Government's alternative assertion of immunity (including whether it was properly barred by the trial court), and to determine whether Westfall Act immunity applies on that basis.

For these reasons, I dissent from Part III of the Court's opinion.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

Few statutes read more clearly than 28 U. S. C. §1447(d): "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise . . . ."[1] That bar to appellate review is a venerable one, dating back

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[1] The remaining clause of §1447(d) provides an exception that is not applicable here: "except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

to 1887, see *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336, 343 (1976). It is, moreover, not just hortatory; it is jurisdictional. *Things Remembered, Inc.* v. *Petrarca*, 516 U. S. 124, 127–128 (1995). Yet beginning in 1976, this Court has repeatedly eroded § 1447(d)'s mandate and expanded the Court's jurisdiction. Today's opinion eviscerates what little remained of Congress's Court-limiting command.

I

The first narrowing of § 1447(d) occurred in *Thermtron Products*, over the dissent of Justice Rehnquist joined by Chief Justice Burger and Justice Stewart (only eight Justices sat in the case). *Thermtron Products* held that remand orders *are* reviewable if they are based on any grounds *other* than the mandatory ground for remand set forth in § 1447(c)—namely, that "'the case was removed improvidently and without jurisdiction.'"[2] 423 U. S., at 342. That result followed, the Court said, because subsections (c) and (d) are "*in pari materia*" and "must be construed together." *Id.*, at 345. Thus, the unlimited phrase "[a]n order remanding a case" magically became "an order remanding a case under this section"—changing prior law, under which the Court had held that the predecessors of § 1447(d) prohibited review of all remand orders. See *id.*, at 354–356 (Rehnquist, J., dissenting). Since, in *Thermtron Products*, the District Court had remanded solely because of its crowded docket, we accepted review and issued a writ of mandamus compelling reconsideration of the order. See also *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 710–712 (1996) (reviewing a remand order predicated on abstention under *Burford* v. *Sun Oil Co.*, 319 U. S. 315 (1943)).[3]

[2] Section 1447(c) has since been amended, specifying as grounds for mandatory remand that "the district court lacks subject matter jurisdiction."

[3] The *Thermtron Products* limitation upon the § 1447(d) bar to appellate review does not affect this case. As the Court recognizes, *ante*, at 235, the District Court was perfectly clear that its remand to state court was based on its lack of jurisdiction.

The next phase in § 1447(d)'s erosion came just last Term, in *Kircher* v. *Putnam Funds Trust*, 547 U. S. 633 (2006). There, as here, the District Court had remanded to state court "on the ground that [it] lacked subject-matter jurisdiction on removal." *Id.*, at 638. That should have been the end of the matter, but it was not. The *Kircher* majority embarked on a searching inquiry into whether the District Court's *real reason* for remand was lack of jurisdiction. See *id.*, at 641–644. In my concurrence, I warned that "[r]eview of the sort engaged in . . . threatens to defeat the purpose of § 1447(d)," which was "'to prevent delay in the trial of remanded cases by protracted litigation of jurisdictional issues.'" *Id.*, at 650 (quoting *Thermtron Products*, *supra*, at 351).

> "Such delay can be created just as easily by asking whether the district court correctly characterized the basis for its order as it can by asking whether that basis was correct . . . . Whether the District Court was right or wrong—even if it was so badly mistaken that it misunderstood the true basis for its orders—it *purported* to remand for lack of jurisdiction, and § 1447(d) bars any further review." *Kircher*, 547 U. S., at 649–650.

Today's opinion goes even further than *Kircher*. Whereas that case at least *claimed* to be applying our precedents, see, *e. g.*, *id.*, at 641–642 (majority opinion) (citing *Briscoe* v. *Bell*, 432 U. S. 404, 413–414, n. 13 (1977)), today's opinion makes no such pretense. Having recognized, as it must, that the District Court in this case invoked § 1447(c) and remanded for lack of subject-matter jurisdiction, *ante*, at 235, the Court nevertheless reaches the amazing conclusion that § 1447(d) does not "contro[l]" whether the remand order is reviewable on appeal, *ante*, at 244.

How can that be? How can a statute explicitly eliminating appellate jurisdiction to review a remand order not "contro[l]" whether an appellate court has jurisdiction to review

a remand order? The Court says the answer to this riddle lies in 28 U. S. C. § 2679(d)(2). But that section says only that the Attorney General's certification is "conclusiv[e] . . . for purposes of *removal*" (emphasis added); it says absolutely nothing about the reviewability of remand orders. Thus, the most § 2679(d)(2) can prove is that the District Court should not have remanded the case; that its remand order was erroneous. But our precedents make abundantly clear that § 1447(d)'s appellate-review bar applies with full force to erroneous remand orders. Just last Term we acknowledged that "a remand premised on an erroneous conclusion of no jurisdiction is unappealable." *Kircher*, *supra*, at 642. See also *Thermtron Products*, *supra*, at 343 ("If a trial judge *purports* to remand a case on the ground that it was removed 'improvidently and without jurisdiction,' his order is not subject to challenge in the court of appeals by appeal, by mandamus, or otherwise" (quoting § 1447(c) (1970 ed.); emphasis added); *Briscoe*, *supra*, at 414, n. 13 (where a remand order is based on one of the grounds enumerated in § 1447(c), "review is unavailable no matter how plain the legal error in ordering the remand"). Today's opinion repudiates that principle. The *only* basis for its holding is that § 2679(d)(2) renders the remand erroneous. This utterly novel proposition, that a remand order can be set aside when it is contrary to law, leaves nothing remaining of § 1447(d). Determination of an order's lawfulness can only be made upon review—and it is precisely review that § 1447(d) forbids.[4]

Congress knows how to make remand orders reviewable when it wishes to do so. See, *e. g.*, 12 U. S. C. § 1441a(*l*)(3)(C) ("The Corporation may appeal any order of remand entered

[4] Like the Court, I need not address whether allowing the case to remain in federal court after declining to substitute the United States as defendant would create an Article III problem. Unlike the Court, however, I choose not to address the point in dicta. See *ante*, at 244 (noting that "the question would arise only if" certain events take place, yet answering the question anyway).

by a United States district court"); § 1819(b)(2)(C) (same); 25 U. S. C. § 487(d) ("[T]he United States shall have the right to appeal from any order of remand in the case"). Even § 1447(d) itself exempts certain remand orders from its own appellate-review bar. See n. 1, *supra*. "Absent a clear statutory command to the contrary, we assume that Congress is aware of the universality of th[e] practice of denying appellate review of remand orders when Congress creates a new ground for removal." *Things Remembered*, 516 U. S., at 128 (internal quotation marks omitted). As the Court recognized in *Kircher*, "[t]here is no such 'clear statutory command' here, and that silence tells us we must look to 28 U. S. C. § 1447(d) to determine the reviewability of remand orders under the Act." 547 U. S., at 641, n. 8. Were the Court in this case to look to § 1447(d), instead of looking for a way around § 1447(d), the answer would be abundantly clear.

II

Respondents argued that, even if the remand order is unreviewable on appeal, the District Court's rejection of the Attorney General's certification should be reviewable as a logically distinct determination, citing *Waco* v. *United States Fidelity & Guaranty Co.*, 293 U. S. 140 (1934). See *ante*, at 254 (SOUTER, J., concurring in part and dissenting in part) (adopting this argument).

The continuing vitality of *Waco* is dubious in light of more recent precedents, see *Kircher*, *supra*, at 645–646, n. 13. We need not address that question here, however, since *Waco* is patently inapposite. There, removal had been premised on diversity jurisdiction. The District Court dismissed the party whose citizenship was alleged to supply the requisite diversity, finding that party's joinder improper, and thus remanded the case for lack of jurisdiction. We found the dismissal order to be reviewable on appeal, even though the remand order was not. 293 U. S., at 143. But there is a

crucial distinction between that case and this one: In *Waco*, reversal of the dismissal would not have subverted the remand. There was *no question* that the suit would proceed in state court regardless of whether the diverse party was rightfully or wrongfully dismissed. Nowhere did the *Waco* Court so much as hint that the District Court might need to reexamine its remand order; to the contrary, it was clear that the remand would occur, no matter what: "If the District Court's [dismissal] order stands, the cross-action will be no part of the case which is remanded to the state court. . . . *A reversal cannot affect the order of remand*, but it will at least, if the dismissal of the petitioner's complaint was erroneous, remit the entire controversy, with the [diverse party] still a party, to the state court for such further proceedings." *Id.*, at 143–144 (emphasis added). In other words, the remand order and the dismissal order were truly "separate orders," *id.*, at 142; we could review—even reverse—the dismissal order without affecting the remand or its impact on the case.

Today's case far more closely resembles *Kircher*. There, the remand order had been predicated upon a finding that the cause of action was not a "covered" class-action suit as defined by the Securities Litigation Uniform Standards Act of 1998 (SLUSA), 112 Stat. 3227, and therefore that the federal courts lacked jurisdiction. The District Court remanded so the suit could continue in state court, outside the confines of SLUSA. If the suit had been "covered," SLUSA would have precluded the action from going forward in any court, state or federal. 15 U. S. C. §77p(b). We therefore determined that neither the remand itself *nor the determination of SLUSA inapplicability* was reviewable on appeal: "The District Court's remand order here cannot be disaggregated as the *Waco* orders could, and if [we were to find the suit to be covered by SLUSA], there [would be] nothing to remand to state court." 547 U. S., at 646, n. 13. That is

precisely the situation in this case: The remand here is predicated upon a finding that the United States should not be substituted as a defendant under the Westfall Act. If we were to disagree with the District Court and substitute the United States as a defendant, while at the same time recognizing (as § 1447(d) requires) that there is nothing we can do about the remand order, the case would go back to state court as an action under the Federal Tort Claims Act (FTCA), see *ante*, at 230, and the remanded case would be styled *Osborn* v. *United States*. But the state court would have to dismiss such a case at once, since federal courts have exclusive jurisdiction over FTCA suits. 28 U. S. C. § 1346(b)(1). Thus, as in *Kircher*, but unlike *Waco*, the District Court's decision on the preliminary matter—here, Westfall Act certification; in *Kircher*, SLUSA applicability—is inextricably intertwined with the remand order. Since that is so, there is no jurisdiction to review either determination.

* * *

In an all-too-rare effort to reduce the high cost of litigation, Congress provided that remand orders are completely unreviewable "on appeal or otherwise." Section 1447(d) effectuated a tradeoff of sorts: Even though Congress undoubtedly recognized that some remand orders would be entered in error, it thought that, all in all, justice would better be served by allowing that small minority of cases to proceed in state courts than by subjecting every remanded case to endless rounds of forum disputes. "[B]y denying any form of review of an order of remand," "Congress . . . established the policy of not permitting interruption of the litigation of the merits of a removed cause by prolonged litigation of questions of jurisdiction of the district court to which the cause is removed." *United States* v. *Rice*, 327 U. S. 742, 751 (1946). Today, in its uncompromising pursuit of technical perfection at all costs, this Court has repealed the tradeoff. One might suggest that Congress should restore it, but it is

hard to imagine new statutory language accomplishing the desired result any more clearly than § 1447(d) already does.

I would vacate the Sixth Circuit's judgment in its entirety, since that court, like this one, plainly lacked jurisdiction.

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CUNNINGHAM *v.* CALIFORNIA

CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

No. 05–6551. Argued October 11, 2006—Decided January 22, 2007

Petitioner Cunningham was tried and convicted of continuous sexual abuse of a child under 14. Under California's determinate sentencing law (DSL), that offense is punishable by one of three precise terms of imprisonment: a lower term sentence of 6 years, a middle term sentence of 12 years, or an upper term sentence of 16 years. The DSL obliged the trial judge to sentence Cunningham to the 12-year middle term unless the judge found one or more additional "circumstances in aggravation." Court Rules adopted to implement the DSL define "circumstances in aggravation" as facts that justify the upper term. Those facts, the Rules provide, must be established by a preponderance of the evidence. Based on a post-trial sentencing hearing, the judge found by a preponderance of the evidence six aggravating facts, including the particular vulnerability of the victim, and one mitigating fact, that Cunningham had no record of prior criminal conduct. Concluding that the aggravators outweighed the sole mitigator, the judge sentenced Cunningham to the upper term of 16 years. The California Court of Appeal affirmed. The State Supreme Court denied review, but in a decision published nine days earlier, *People* v. *Black*, 35 Cal. 4th 1238, 113 P. 3d 534, that court held that the DSL survived Sixth Amendment inspection.

Held: The DSL, by placing sentence-elevating factfinding within the judge's province, violates a defendant's right to trial by jury safeguarded by the Sixth and Fourteenth Amendments. Pp. 281–294.

(a) In *Apprendi* v. *New Jersey*, 530 U. S. 466, this Court held that, under the Sixth Amendment, any fact (other than a prior conviction) that exposes a defendant to a sentence in excess of the relevant statutory maximum must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of the evidence. See *id.*, at 490. The Court has applied the rule of *Apprendi* to facts subjecting a defendant to the death penalty, *Ring* v. *Arizona*, 536 U. S. 584, 602, 609, facts permitting a sentence in excess of the "standard range" under Washington's Sentencing Reform Act (Reform Act), *Blakely* v. *Washington*, 542 U. S. 296, 304–305, and facts triggering a sentence range elevation under the then-mandatory Federal Sentencing Guidelines, *United States* v. *Booker*, 543 U. S. 220, 243–244. *Blakely* and *Booker* bear most closely on the question presented here.

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The maximum penalty for Blakely's offense, under Washington's Reform Act, was ten years' imprisonment, but if no facts beyond those reflected in the jury's verdict were found by the trial judge, Blakely could not receive a sentence above a standard range of 49 to 53 months. Blakely was sentenced to 90 months, more than three years above the standard range, based on the judge's finding of deliberate cruelty. Applying *Apprendi*, this Court held the sentence unconstitutional. The State in *Blakely* endeavored to distinguish *Apprendi*, contending that Blakely's sentence was within the judge's discretion based solely on the guilty verdict. The Court dismissed that argument. Blakely could not have been sentenced above the standard range absent an additional fact. Consequently, that fact was subject to the Sixth Amendment's jury-trial guarantee. It did not matter that Blakely's sentence, though outside the standard range, was within the 10-year maximum. Because the judge could not have imposed a sentence outside the standard range without finding an additional fact, the top of that range—53 months, not 10 years—was the relevant statutory maximum. The Court also rejected the State's arguments that *Apprendi* was satisfied because the Reform Act did not specify an exclusive catalog of facts on which a judge might base a departure from the standard range, and because it ultimately left the decision whether or not to depart to the judge's discretion.

Booker was sentenced under the Federal Sentencing Guidelines. The facts found by the jury yielded a base Guidelines range of 210 to 262 months' imprisonment, a range the judge could not exceed without undertaking additional factfinding. The judge did so, making a finding that boosted Booker into a higher Guidelines range. This Court held Booker's sentence impermissible under the Sixth Amendment. There was "no distinction of constitutional significance between the Federal Sentencing Guidelines and the Washington procedures at issue in *[Blakely]*." 543 U. S., at 233. Both were "mandatory and impose[d] binding requirements on all sentencing judges." *Ibid.* All Members of the Court agreed, however, that the Guidelines would not implicate the Sixth Amendment if they were advisory. *Ibid.* Facing the remedial question, the Court concluded that rendering the Guidelines advisory came closest to what Congress would have intended had it known that the Guidelines were vulnerable to a Sixth Amendment challenge. Under the advisory Guidelines system described in *Booker*, judges would no longer be confined to the sentencing range dictated by the Guidelines, but would be obliged to "take account" of that range along with the sentencing goals enumerated in the Sentencing Reform Act (SRA). *Id.*, at 259, 264. In place of the SRA provision governing appellate review of sentences under the mandatory Guidelines scheme, the

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Court installed a "reasonableness" standard of review. *Id.*, at 261. Pp. 281–288.

(b) In all material respects, California's DSL resembles the sentencing systems invalidated in *Blakely* and *Booker*. Following the reasoning in those cases, the middle term prescribed under California law, not the upper term, is the relevant statutory maximum. Because aggravating facts that authorize the upper term are found by the judge, and need only be established by a preponderance of the evidence, the DSL violates the rule of *Apprendi*.

While "that should be the end of the matter," *Blakely*, 542 U. S., at 313, in *People* v. *Black*, the California Supreme Court insisted that the DSL survives inspection under our precedents. The *Black* court reasoned that, given the ample discretion afforded trial judges to identify aggravating facts warranting an upper term sentence, the DSL did "not represent a legislative effort to shift the proof of particular facts from elements of a crime (to be proved to a jury) to sentencing factors (to be decided by a judge)," 35 Cal. 4th, at 1255–1256, 113 P. 3d, at 543–544. This Court cautioned in *Blakely*, however, that broad discretion to decide what facts may support an enhanced sentence, or to determine whether an enhanced sentence is warranted in a particular case, does not shield a sentencing system from the force of this Court's decisions. The *Black* court also urged that the DSL is not cause for concern because it reduced the penalties for most crimes over the prior indeterminate sentencing scheme; because the system is fair to defendants; and because the DSL requires statutory sentence enhancements (as distinguished from aggravators) to be charged in the indictment and proved to a jury beyond a reasonable doubt. The *Black* court's examination, in short, satisfied it that California's sentencing system does not implicate significantly the concerns underlying the Sixth Amendment's jury-trial guarantee. This Court's decisions, however, leave no room for such an examination. Asking whether a defendant's basic jury-trial right is preserved, though some facts essential to punishment are reserved for determination by the judge, is the very inquiry *Apprendi*'s bright-line rule was designed to exclude.

Ultimately, the *Black* court relied on an equation of California's DSL to the post-*Booker* federal system. That attempted comparison is unavailing. The *Booker* Court held the Federal Guidelines incompatible with the Sixth Amendment because they were "mandatory and impose[d] binding requirements on all sentencing judges," 543 U. S., at 233. To remedy the constitutional infirmity, the Court excised provisions that rendered the system mandatory, leaving the Guidelines in place as advisory only. The DSL, however, does not resemble the advisory system the Court in *Booker* had in view. Under California's sys-

tem, judges are not free to exercise their "discretion to select a specific sentence within a defined range." *Ibid.* California's Legislature has adopted sentencing triads, three fixed sentences with no ranges between them. Cunningham's sentencing judge had no discretion to select a sentence within a range of 6 to 16 years, but had to impose 12 years, nothing less and nothing more, unless the judge found facts allowing a sentence of 6 or 16 years. Factfinding to elevate a sentence from 12 to 16 years, this Court's decisions make plain, falls within the province of the jury employing a beyond-a-reasonable-doubt standard, not the bailiwick of a judge determining where the preponderance of the evidence lies.

The *Black* court attempted to rescue the DSL's judicial factfinding authority by typing it a reasonableness constraint, equivalent to the constraint operative in the post-*Booker* federal system. Reasonableness, however, is not the touchstone of Sixth Amendment analysis. The reasonableness requirement *Booker* anticipated for the federal system operates *within* the constitutional constraints delineated in this Court's precedent, not as a substitute for those constraints. Because the DSL allocates to judges sole authority to find facts permitting the imposition of an upper term sentence, the system violates the Sixth Amendment. *Booker*'s remedy for the Federal Guidelines, in short, is not a recipe for rendering this Court's Sixth Amendment case law toothless. Further elaboration here on the federal reasonableness standard is neither necessary nor proper. The Court has granted review in two cases—to be argued and decided later this Term—raising questions trained on that matter. *Claiborne* v. *United States*, No. 06–5618; *Rita* v. *United States*, No. 06–5754. Pp. 288–293.

(c) As to the adjustment of California's sentencing system in light of the Court's ruling, "[t]he ball . . . lies in [California's] court." *Booker*, 543 U. S., at 265. Several States have modified their systems in the wake of *Apprendi* and *Blakely* to retain determinate sentencing, by calling upon the jury to find any fact necessary to the imposition of an elevated sentence. Other States have chosen to permit judges genuinely "to exercise broad discretion . . . within a statutory range," which, "everyone agrees," encounters no Sixth Amendment shoal. 543 U. S., at 233. California may follow the paths taken by its sister States or otherwise alter its system, so long as it observes Sixth Amendment limitations declared in this Court's decisions. Pp. 293–294.

Reversed in part and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, SOUTER, and THOMAS, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which BREYER, J., joined, *post*, p. 295.

ALITO, J., filed a dissenting opinion, in which KENNEDY and BREYER, JJ., joined, *post*, p. 297.

Peter Gold, by appointment of the Court, 547 U. S. 1053, argued the cause and filed briefs for petitioner.

Jeffrey M. Laurence, Deputy Attorney General of California, argued the cause for respondent. With him on the brief were *Bill Lockyer*, Attorney General, *Robert R. Anderson*, Chief Assistant Attorney General, *Gerald A. Engler*, Senior Assistant Attorney General, *Donald E. de Nicola*, Deputy Solicitor General, and *Stan Helfman*, Supervising Deputy Attorney General.*

JUSTICE GINSBURG delivered the opinion of the Court.

California's determinate sentencing law (DSL) assigns to the trial judge, not to the jury, authority to find the facts that expose a defendant to an elevated "upper term" sentence. The facts so found are neither inherent in the jury's verdict nor embraced by the defendant's plea, and they need only be established by a preponderance of the evidence, not beyond a reasonable doubt. The question presented is whether the DSL, by placing sentence-elevating factfinding within the judge's province, violates a defendant's right to trial by jury safeguarded by the Sixth and Fourteenth Amendments. We hold that it does.

As this Court's decisions instruct, the Federal Constitution's jury-trial guarantee proscribes a sentencing scheme

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**Jeffrey L. Fisher*, *Pamela S. Karlan*, *Thomas C. Goldstein*, *Amy Howe*, and *Kevin K. Russell* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

A brief of *amici curiae* urging affirmance was filed for the State of Hawaii et al. by *Mark J. Bennett*, Attorney General of Hawaii, *Dorothy D. Sellers* and *Kimberly A. Tsumoto*, Deputy Attorneys General, and *Dan Schweitzer*, and by the Attorneys General for their respective States as follows: *Mike Beebe* of Arkansas, *John W. Suthers* of Colorado, *Lisa Madigan* of Illinois, *Mike McGrath* of Montana, *George J. Chanos* of Nevada, *Hardy Myers* of Oregon, *Greg Abbott* of Texas, and *Mark L. Shurtleff* of Utah.

that allows a judge to impose a sentence above the statutory maximum based on a fact, other than a prior conviction, not found by a jury or admitted by the defendant. *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000); *Ring* v. *Arizona*, 536 U. S. 584 (2002); *Blakely* v. *Washington*, 542 U. S. 296 (2004); *United States* v. *Booker*, 543 U. S. 220 (2005). "[T]he relevant 'statutory maximum,'" this Court has clarified, "is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings." *Blakely*, 542 U. S., at 303–304 (emphasis in original). In petitioner's case, the jury's verdict alone limited the permissible sentence to 12 years. Additional factfinding by the trial judge, however, yielded an upper term sentence of 16 years. The California Court of Appeal affirmed the harsher sentence. We granted certiorari, 546 U. S. 1169 (2006), and now reverse that disposition because the four-year elevation based on judicial factfinding denied petitioner his right to a jury trial.

I

A

Petitioner John Cunningham was tried and convicted of continuous sexual abuse of a child under the age of 14. Under the DSL, that offense is punishable by imprisonment for a lower term sentence of 6 years, a middle term sentence of 12 years, or an upper term sentence of 16 years. Cal. Penal Code Ann. §288.5(a) (West 1999) (hereinafter Penal Code). As further explained below, see *infra*, at 277–281, the DSL obliged the trial judge to sentence Cunningham to the 12-year middle term unless the judge found one or more additional facts in aggravation. Based on a post-trial sentencing hearing, the trial judge found by a preponderance of the evidence six aggravating circumstances, among them, the particular vulnerability of Cunningham's victim, and Cunningham's violent conduct, which indicated a serious danger to the community. Tr. of Sentencing (Aug. 1, 2003),

App. 22.[1] In mitigation, the judge found one fact: Cunningham had no record of prior criminal conduct. *Ibid.* Concluding that the aggravators outweighed the sole mitigator, the judge sentenced Cunningham to the upper term of 16 years. *Id.*, at 23.

A panel of the California Court of Appeal affirmed the conviction and sentence; one judge dissented in part, urging that this Court's precedent precluded the judge-determined four-year increase in Cunningham's sentence. No. A103501 (Apr. 18, 2005), App. 43–48; *id.*, at 48–50 (Jones, J., concurring and dissenting).[2] The California Supreme Court denied review. No. S133971 (June 29, 2005), *id.*, at 52. In a reasoned decision published nine days earlier, that court considered the question here presented and held that the DSL survived Sixth Amendment inspection. *People* v. *Black*, 35 Cal. 4th 1238, 113 P. 3d 534 (June 20, 2005).

B

Enacted in 1977, the DSL replaced an indeterminate sentencing regime in force in California for some 60 years. See *id.*, at 1246, 113 P. 3d, at 537; Cassou & Taugher, Determinate Sentencing in California: The New Numbers Game, 9 Pac. L. J. 5, 6–22 (1978) (hereinafter Cassou & Taugher). Under

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[1] The particular vulnerability of the victim is listed in Cal. Rule of Court 4.421(a)(3) (Criminal Cases) (West 2006) (hereinafter Rule), as a fact "relating to the crime." Violent conduct indicating a serious danger to society is listed in Rule 4.421(b)(1) as a fact "relating to the defendant."

[2] In addition to a Sixth Amendment challenge, Cunningham disputed the substance of five of the six findings made by the trial judge. The appellate panel affirmed the trial judge's vulnerable victim and violent conduct findings, but rejected the finding that Cunningham abused a position of trust (because that finding overlapped with the vulnerable victim finding). The panel did not decide whether the judge's other findings were warranted, concluding that she properly relied on at least two aggravating facts in imposing the upper term, and that it was not "reasonably probable" that a different sentence would have been imposed absent any improper findings. App. 43–46; *id.*, at 51 (May 4, 2005, order modifying opinion and denying rehearing).

the prior regime, courts imposed open-ended prison terms (often one year to life), and the parole board—the Adult Authority—determined the amount of time a felon would ultimately spend in prison. *Black*, 35 Cal. 4th, at 1246, 1256, 113 P. 3d, at 537, 544; *In re Roberts*, 36 Cal. 4th 575, 588, n. 6, 115 P. 3d 1121, 1129, n. 6 (2005); Cassou & Taugher 5–9. In contrast, the DSL fixed the terms of imprisonment for most offenses, and eliminated the possibility of early release on parole. See Penal Code §3000 *et seq.* (West Supp. 2006); 3 B. Witkin & N. Epstein, California Criminal Law §610, p. 809 (3d ed. 2000); Brief for Respondent 7.[3] Through the DSL, California's lawmakers aimed to promote uniform and proportionate punishment. Penal Code §1170(a)(1); *Black*, 35 Cal. 4th, at 1246, 113 P. 3d, at 537.

For most offenses, including Cunningham's, the DSL regime is implemented in the following manner. The statute defining the offense prescribes three precise terms of imprisonment—a lower, middle, and upper term sentence. *E. g.*, Penal Code §288.5(a) (West 1999) (a person convicted of continuous sexual abuse of a child "shall be punished by imprisonment in the state prison for a term of 6, 12, or 16 years"). See also *Black*, 35 Cal. 4th, at 1247, 113 P. 3d, at 538. Penal Code §1170(b) (West Supp. 2006) controls the trial judge's choice; it provides that "the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime." "[C]ircumstances in aggravation or mitigation" are to be determined by the court after consideration of several items: the trial record; the probation officer's report; statements in aggravation or mitigation submitted by the parties, the victim, or the victim's family; "and any further evidence introduced at the sentencing hearing." *Ibid.*

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[3] Murder and certain other grave offenses still carry lengthy indeterminate terms with the possibility of early release on parole. Brief for Respondent 7, n. 2. See, *e. g.*, Penal Code §190 (West Supp. 2006).

The DSL directed the State's Judicial Council[4] to adopt Rules guiding the sentencing judge's decision whether to "[i]mpose the lower or upper prison term." Penal Code § 1170.3(a)(2) (West 2004).[5] Restating § 1170(b), the Council's Rules provide that "[t]he middle term shall be selected unless imposition of the upper or lower term is justified by circumstances in aggravation or mitigation." Rule 4.420(a). "Circumstances in aggravation," as crisply defined by the Judicial Council, means "*facts* which justify the imposition of the upper prison term." Rule 4.405(d) (emphasis added). Facts aggravating an offense, the Rules instruct, "shall be established by a preponderance of the evidence," Rule 4.420(b),[6] and must be "stated orally on the record," Rule 4.420(e).

The Rules provide a nonexhaustive list of aggravating circumstances, including "[f]acts relating to the crime," Rule 4.421(a),[7] "[f]acts relating to the defendant," Rule 4.421(b),[8] and "[a]ny other facts statutorily declared to be circumstances in aggravation," Rule 4.421(c). Beyond the enumerated circumstances, "the judge is free to consider any 'ad-

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[4] The Judicial Council includes the chief justice and another justice of the California Supreme Court, three judges sitting on the Courts of Appeal, ten judges from the Superior Courts, and other nonvoting members. Cal. Const., Art. 6, § 6(a) (West Supp. 2006). The California Constitution grants the Council authority, *inter alia*, to "adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute." *Ibid.*, § 6(d).

[5] The Rules were amended on January 1, 2007. Those amendments made technical changes, none of them material to the constitutional question before us. We refer in this opinion to the prior text of the Rules, upon which the parties and principal authorities rely.

[6] The judge must provide a statement of reasons for a sentence only when a lower or upper term sentence is imposed. Rules 4.406(b), 4.420(e).

[7] *E. g.*, Rule 4.421(a)(1) ("[T]he fact that . . . [t]he crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness.").

[8] *E. g.*, Rule 4.421(b)(1) ("[T]he fact that . . . [t]he defendant has engaged in violent conduct which indicates a serious danger to society.").

ditional criteria reasonably related to the decision being made.'" *Black*, 35 Cal. 4th, at 1247, 113 P. 3d, at 538 (quoting Rule 4.408(a)). "A fact that is an element of the crime," however, "shall not be used to impose the upper term." Rule 4.420(d). In sum, California's DSL, and the Rules governing its application, direct the sentencing court to start with the middle term, and to move from that term only when the court itself finds and places on the record facts—whether related to the offense or the offender—beyond the elements of the charged offense.

JUSTICE ALITO maintains, however, that a circumstance in aggravation need not be a fact at all. In his view, a policy judgment, or even a judge's "subjective belief" regarding the appropriate sentence, qualifies as an aggravating circumstance. *Post*, at 307–308 (dissenting opinion) (internal quotation marks omitted). California's Rules, however, constantly refer to "facts." As just noted, the Rules define "circumstances in aggravation" as "*facts* which justify the imposition of the upper prison term." Rule 4.405(d) (emphasis added).[9] And "circumstances in aggravation," the Rules unambiguously declare, "shall be established by a preponderance of the evidence," Rule 4.420(b), a clear factfinding directive to which there is no exception. See *People* v. *Hall*, 8 Cal. 4th 950, 957, 883 P. 2d 974, 978 (1994) ("Selection of the upper term is justified *only* if circumstances in aggravation are established by a preponderance of evidence . . . ." (emphasis added)).

While the Rules list "[g]eneral objectives of sentencing," Rule 4.410(a), nowhere are these objectives cast as "circumstances in aggravation" that alone authorize an upper term

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[9] See also, *e. g.*, Rule 4.420(b) ("Selection of the upper term is justified only if, after a consideration of all the relevant *facts*, the circumstances in aggravation outweigh the circumstances in mitigation." (emphasis added)); Rule 4.420(e) (court must provide "a concise statement of the ultimate *facts* that the court deemed to constitute circumstances in aggravation or mitigation" (emphasis added)).

sentence. The Rules also state that "[t]he enumeration . . . of some criteria for the making of discretionary sentencing decisions does not prohibit the application of additional criteria reasonably related to the decision being made." Rule 4.408(a). California courts have not read this language to unmoor "circumstances in aggravation" from any factfinding anchor.

In line with the Rules, the California Supreme Court has repeatedly referred to circumstances in aggravation as facts. See, *e. g.*, *Black*, 35 Cal. 4th, at 1256, 113 P. 3d, at 544 ("The Legislature did not identify all of the particular *facts* that could justify the upper term." (emphasis added)); *People* v. *Wiley*, 9 Cal. 4th 580, 587, 889 P. 2d 541, 545 (1995) ("[T]rial courts are assigned the task of deciding whether to impose an upper or lower term of imprisonment based upon their determination whether there are circumstances in aggravation or mitigation of the crime, *a determination that invariably requires numerous factual findings.*" (emphasis added and internal quotation marks omitted)).

It is unsurprising, then, that State's counsel, at oral argument, acknowledged that he knew of no case in which a California trial judge had gone beyond the middle term based not on any fact the judge found, but solely on the basis of a policy judgment or subjective belief. See Tr. of Oral Arg. 49–50.

Notably, the Penal Code permits elevation of a sentence above the upper term based on specified statutory enhancements relating to the defendant's criminal history or circumstances of the crime. See, *e. g.*, Penal Code §667 *et seq.* (West 1999); §12022 *et seq.* (West 2000 and Supp. 2006). See also *Black*, 35 Cal. 4th, at 1257, 113 P. 3d, at 545. Unlike aggravating circumstances, statutory enhancements must be charged in the indictment, and the underlying facts must be proved to the jury beyond a reasonable doubt. Penal Code §1170.1(e) (West 2004); *Black*, 35 Cal. 4th, at 1257, 113 P. 3d, at 545. A fact underlying an enhancement cannot do double

duty; it cannot be used to impose an upper term sentence and, on top of that, an enhanced term. Penal Code § 1170(b). Where permitted by statute, however, a judge may use a fact qualifying as an enhancer to impose an upper term rather than an enhanced sentence. *Ibid.*; Rule 4.420(c).

II

This Court has repeatedly held that, under the Sixth Amendment, any fact that exposes a defendant to a greater potential sentence must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of the evidence. While this rule is rooted in longstanding common-law practice, its explicit statement in our decisions is recent. In *Jones* v. *United States*, 526 U. S. 227 (1999), we examined the Sixth Amendment's historical and doctrinal foundations, and recognized that judicial fact-finding operating to increase a defendant's otherwise maximum punishment posed a grave constitutional question. *Id.*, at 239–252. While the Court construed the statute at issue to avoid the question, the *Jones* opinion presaged our decision, some 15 months later, in *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000).

Charles Apprendi was convicted of possession of a firearm for an unlawful purpose, a second-degree offense under New Jersey law punishable by five to ten years' imprisonment. *Id.*, at 468. A separate "hate crime" statute authorized an "extended term" of imprisonment: Ten to twenty years could be imposed if the trial judge found, by a preponderance of the evidence, that "'[t]he defendant in committing the crime acted with a purpose to intimidate an individual or group of individuals because of race, color, gender, handicap, religion, sexual orientation or ethnicity.'" *Id.*, at 468–469 (quoting N. J. Stat. Ann. § 2C:44–3(e) (West Supp. 1999–2000)). The judge in Apprendi's case so found, and therefore sentenced the defendant to 12 years' imprisonment. This Court held that the Sixth Amendment proscribed the enhanced sen-

tence. 530 U. S., at 471. Other than a prior conviction, see *Almendarez-Torres* v. *United States*, 523 U. S. 224, 239–247 (1998), we held in *Apprendi*, "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U. S., at 490. See also *Harris* v. *United States*, 536 U. S. 545, 557–566 (2002) (plurality opinion) ("*Apprendi* said that any fact extending the defendant's sentence beyond the maximum authorized by the jury's verdict would have been considered an element of an aggravated crime—and thus the domain of the jury—by those who framed the Bill of Rights.").

We have since reaffirmed the rule of *Apprendi*, applying it to facts subjecting a defendant to the death penalty, *Ring*, 536 U. S., at 602, 609, facts permitting a sentence in excess of the "standard range" under Washington's Sentencing Reform Act, *Blakely*, 542 U. S., at 304–305, and facts triggering a sentence range elevation under the then-mandatory Federal Sentencing Guidelines, *Booker*, 543 U. S., at 243–244. *Blakely* and *Booker* bear most closely on the question presented in this case.

Ralph Howard Blakely was convicted of second-degree kidnaping with a firearm, a class B felony under Washington law. *Blakely*, 542 U. S., at 298–299. While the overall statutory maximum for a class B felony was ten years, the State's Sentencing Reform Act (Reform Act) added an important qualification: If no facts beyond those reflected in the jury's verdict were found by the trial judge, a defendant could not receive a sentence above a "standard range" of 49 to 53 months. *Id.*, at 299–300. The Reform Act permitted but did not require a judge to exceed that standard range if she found "'substantial and compelling reasons justifying an exceptional sentence.'" *Ibid.* (quoting Wash. Rev. Code Ann. §9.94A.120(2) (2000)). The Reform Act set out a nonexhaustive list of aggravating facts on which such a sentence elevation could be based. It also clarified that a fact taken

into account in fixing the standard range—*i. e.*, any fact found by the jury—could under no circumstances count in the determination whether to impose an exceptional sentence. 542 U. S., at 299–300. Blakely was sentenced to 90 months' imprisonment, more than three years above the standard range, based on the trial judge's finding that he had acted with deliberate cruelty. *Id.*, at 300.

Applying the rule of *Apprendi*, this Court held Blakely's sentence unconstitutional. The State in *Blakely* had endeavored to distinguish *Apprendi* on the ground that "[u]nder the Washington guidelines, an exceptional sentence is within the court's discretion as a result of a guilty verdict." Brief for Respondent in *Blakely* v. *Washington*, O. T. 2003, No. 02–1632, p. 15. We rejected that argument. The judge could not have sentenced Blakely above the standard range without finding the additional fact of deliberate cruelty. Consequently, that fact was subject to the Sixth Amendment's jury-trial guarantee. 542 U. S., at 304–314. It did not matter, we explained, that Blakely's sentence, though outside the standard range, was within the 10-year maximum for class B felonies:

> "Our precedents make clear . . . that the 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant* . . . . In other words, the relevant 'statutory maximum' is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings. When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts 'which the law makes essential to the punishment,' . . . and the judge exceeds his proper authority." *Id.*, at 303–304 (quoting 1 J. Bishop, Criminal Procedure § 87, p. 55 (2d ed. 1872); emphasis in original).

Because the judge in Blakely's case could not have imposed a sentence outside the standard range without finding an additional fact, the top of that range—53 months, and not 10 years—was the relevant statutory maximum. 542 U. S., at 304.

The State had additionally argued in *Blakely* that *Apprendi*'s rule was satisfied because Washington's Reform Act did not specify an exclusive catalog of potential facts on which a judge might base a departure from the standard range. This Court rejected that argument as well. "Whether the judge's authority to impose an enhanced sentence depends on finding a specified fact . . . , one of several specified facts . . . , or *any* aggravating fact (as here)," we observed, "it remains the case that the jury's verdict alone does not authorize the sentence." 542 U. S., at 305 (emphasis in original). Further, we held it irrelevant that the Reform Act ultimately left the decision whether or not to depart to the judge's discretion: "Whether the judicially determined facts *require* a sentence enhancement or merely *allow* it," we noted, "the verdict alone does not authorize the sentence." *Ibid.*, n. 8 (emphasis in original).

Freddie Booker was convicted of possession with intent to distribute crack cocaine and was sentenced under the Federal Sentencing Guidelines. The facts found by Booker's jury yielded a base Guidelines range of 210 to 262 months' imprisonment, a range the judge could not exceed without undertaking additional factfinding. *Booker*, 543 U. S., at 227, 233–234. The judge did so, finding by a preponderance of the evidence that Booker possessed an amount of drugs in excess of the amount determined by the jury's verdict. That finding boosted Booker into a higher Guidelines range. Booker was sentenced at the bottom of the higher range, to 360 months in prison. *Id.*, at 227.

In an opinion written by JUSTICE STEVENS for a five-Member majority, the Court held Booker's sentence impermissible under the Sixth Amendment. In the majority's

judgment, there was "no distinction of constitutional significance between the Federal Sentencing Guidelines and the Washington procedures at issue in *[Blakely]*." *Id.*, at 233. Both systems were "mandatory and impose[d] binding requirements on all sentencing judges." *Ibid.*[10] JUSTICE STEVENS' opinion for the Court, it bears emphasis, next expressed a view on which there was no disagreement among the Justices. He acknowledged that the Federal Guidelines would not implicate the Sixth Amendment were they advisory:

> "If the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment. We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range. Indeed, everyone agrees that the constitutional issues presented by [this case] would have been avoided entirely if Congress had omitted from the [federal Sentencing Reform Act] the provisions that make the Guidelines binding on district judges . . . . For when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant.

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[10] California's DSL, we note in this context, resembles pre-*Booker* federal sentencing in the same ways Washington's sentencing system did: The key California Penal Code provision states that the sentencing court "*shall order* imposition of the middle term" absent "circumstances in aggravation or mitigation of the crime," § 1170(b) (West 2004) (emphasis added), and any move to the upper or lower term must be justified by "a concise statement of *the ultimate facts*" on which the departure rests, Rule 4.420(e) (emphasis added). But see *post*, at 303 (ALITO, J., dissenting) (characterizing California's DSL as indistinguishable from post-*Booker* sentencing).

> "The Guidelines as written, however, are not advisory; they are mandatory and binding on all judges." *Ibid.* (citations omitted).

In an opinion written by JUSTICE BREYER, also garnering a five-Member majority, the Court faced the remedial question, which turned on an assessment of legislative intent: What alteration would Congress have intended had it known that the Guidelines were vulnerable to a Sixth Amendment challenge? Three choices were apparent: The Court could invalidate in its entirety the Sentencing Reform Act of 1984 (SRA), the law comprehensively delineating the federal sentencing system; or it could preserve the SRA, and the mandatory Guidelines regime the SRA established, by attaching a jury-trial requirement to any fact increasing a defendant's base Guidelines range; finally, the Court could render the Guidelines advisory by severing two provisions of the SRA, 18 U. S. C. §§3553(b)(1) and 3742(e) (2000 ed. and Supp. IV). 543 U. S., at 246–249.[11] Recognizing that "reasonable minds can, and do, differ" on the remedial question, the majority concluded that the advisory Guidelines solution came closest to the congressional mark. *Id.*, at 248–258.

Under the system described in JUSTICE BREYER's opinion for the Court in *Booker*, judges would no longer be tied to the sentencing range indicated in the Guidelines. But they would be obliged to "take account of" that range along with the sentencing goals Congress enumerated in the SRA at 18

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[11] Title 18 U. S. C. §3553(b)(1) mandated the imposition of a Guidelines sentence unless the district court found "an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines." Section 3742(e) directed the court of appeals to determine, *inter alia*, whether the district court correctly applied the Guidelines, §3742(e)(2), and, if the sentence imposed fell outside the applicable Guidelines range, whether the sentencing judge had provided a written statement of reasons, whether §3553(b) and the facts of the case warranted the departure, and whether the degree of departure was reasonable, §3742(e)(3).

U. S. C. §3553(a). 543 U. S., at 259, 264.[12] Having severed §3742(e), the provision of the SRA governing appellate review of sentences under the mandatory Guidelines scheme, see *supra*, at 286, and n. 11, the Court installed, as consistent with the SRA and the sound administration of justice, a "reasonableness" standard of review. 543 U. S., at 261. Without attempting an elaborate discussion of that standard, JUSTICE BREYER's remedial opinion for the Court observed: "Section 3553(a) remains in effect, and sets forth numerous factors that guide sentencing. Those factors in turn will guide appellate courts, as they have in the past, in determining whether a sentence is reasonable." *Ibid.*[13] The Court

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[12] Section 3553(a) instructs sentencing judges to consider "the nature and circumstances of the offense and the history and characteristics of the defendant," "the kinds of sentences available," and the Guidelines and policy statements issued by the United States Sentencing Commission. §3553(a)(1), (3)–(5). Avoidance of unwarranted sentencing disparities, and the need to provide restitution, are also listed as concerns to which the judge should respond. §3553(a)(6)–(7).

In a further enumeration, §3553(a) calls for the imposition of "a sentence sufficient, but not greater than necessary" to "reflect the seriousness of the offense," "promote respect for the law," "provide just punishment for the offense," "afford adequate deterrence to criminal conduct," "protect the public from further crimes of the defendant," and "provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." §3553(a)(2).

[13] While this case does not call for elaboration of the reasonableness check on federal sentencing post-*Booker*, we note that the Court has granted review in two cases raising questions trained on that matter: *Claiborne* v. *United States*, No. 06–5618, *post*, p. 1016; and *Rita* v. *United States*, No. 06–5754, *post*, p. 1016. In *Claiborne*, the Court will consider whether it is consistent with the advisory cast of the Guidelines system post-*Booker* to require that extraordinary circumstances attend a sentence varying substantially from the Guidelines. *Rita* includes the question whether is it consistent with *Booker* to accord a presumption of reasonableness to a within-Guidelines sentence.

In this regard, we note JUSTICE ALITO's view that California's DSL is essentially the same as post-*Booker* federal sentencing. *Post*, at 297–307. To maintain that position, his dissent previews, without benefit of briefing

emphasized the provisional character of the *Booker* remedy. Recognizing that authority to speak "the last word" resides in Congress, the Court said:

> "The ball now lies in Congress' court. The National Legislature is equipped to devise and install, long term, the sentencing system, compatible with the Constitution, that Congress judges best for the federal system of justice." *Id.*, at 265.

We turn now to the instant case in light of both parts of the Court's *Booker* opinion, and our earlier decisions in point.

III

Under California's DSL, an upper term sentence may be imposed only when the trial judge finds an aggravating circumstance. See *supra*, at 277–278. An element of the charged offense, essential to a jury's determination of guilt, or admitted in a defendant's guilty plea, does not qualify as such a circumstance. See *supra*, at 278–279. Instead, aggravating circumstances depend on facts found discretely and solely by the judge. In accord with *Blakely*, therefore, the middle term prescribed in California's statutes, not the upper term, is the relevant statutory maximum. 542 U. S., at 303 ("[T]he 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*." (emphasis in original)). Because circumstances in aggravation are found by the judge, not the jury, and need only be established by a preponderance of the evidence, not beyond a reasonable doubt, see *supra*, at 278, the DSL violates *Apprendi*'s bright-line rule: Except for a prior conviction, "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submit-

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or argument, how "reasonableness review," post-*Booker*, works. *Post*, at 310–311. It is neither necessary nor proper now to join issue with JUSTICE ALITO on this matter.

ted to a jury, and proved beyond a reasonable doubt," 530 U. S., at 490.

While "[t]hat should be the end of the matter," *Blakely*, 542 U. S., at 313, in *People* v. *Black*, the California Supreme Court held otherwise. In that court's view, the DSL survived examination under our precedent intact. See 35 Cal. 4th, at 1254–1261, 113 P. 3d, at 543–548. The *Black* court acknowledged that California's system appears on surface inspection to be in tension with the rule of *Apprendi*. But in "operation and effect," the court said, the DSL "simply authorize[s] a sentencing court to engage in the type of factfinding that traditionally has been incident to the judge's selection of an appropriate sentence within a statutorily prescribed sentencing range." 35 Cal. 4th, at 1254, 113 P. 3d, at 543. Therefore, the court concluded, "the upper term is the 'statutory maximum' and a trial court's imposition of an upper term sentence does not violate a defendant's right to a jury trial under the principles set forth in *Apprendi*, *Blakely*, and *Booker*." *Ibid.* But see *id.*, at 1270, 113 P. 3d, at 554 (Kennard, J., concurring and dissenting) ("Nothing in the high court's majority opinions in *Apprendi*, *Blakely*, and *Booker* suggests that the constitutionality of a state's sentencing scheme turns on whether, in the words of the majority here, it involves the type of factfinding 'that traditionally has been performed by a judge.'" (quoting *id.*, at 1253, 113 P. 3d, at 542)).

The *Black* court's conclusion that the upper term, and not the middle term, qualifies as the relevant statutory maximum, rested on several considerations. First, the court reasoned that, given the ample discretion afforded trial judges to identify aggravating facts warranting an upper term sentence, the DSL

> "does not represent a legislative effort to shift the proof of particular facts from elements of a crime (to be proved to a jury) to sentencing factors (to be decided by a judge). . . . Instead, it afforded the sentencing judge

> the discretion to decide, with the guidance of rules and statutes, whether the facts of the case and the history of the defendant justify the higher sentence. Such a system does not diminish the traditional power of the jury." *Id.*, at 1256, 113 P. 3d, at 544 (footnote omitted).

We cautioned in *Blakely*, however, that broad discretion to decide what facts may support an enhanced sentence, or to determine whether an enhanced sentence is warranted in any particular case, does not shield a sentencing system from the force of our decisions. If the jury's verdict alone does not authorize the sentence, if, instead, the judge must find an additional fact to impose the longer term, the Sixth Amendment requirement is not satisfied. 542 U. S., at 305, and n. 8.

The *Black* court also urged that the DSL is not cause for concern because it reduced the penalties for most crimes over the prior indeterminate sentencing regime. 35 Cal. 4th, at 1256–1258, 113 P. 3d, at 544–545. But see *id.*, at 1271–1272, 113 P. 3d, at 555 (Kennard, J., concurring and dissenting) ("This aspect of our sentencing law does not differ significantly from the Washington sentencing scheme [the high court invalidated in *Blakely*.]"); *supra*, at 283–284. Furthermore, California's system is not unfair to defendants, for they "cannot reasonably expect a guarantee that the upper term will not be imposed" given judges' broad discretion to impose an upper term sentence or to keep their punishment at the middle term. 35 Cal. 4th, at 1258–1259, 113 P. 3d, at 545–546. The *Black* court additionally noted that the DSL requires statutory enhancements (as distinguished from aggravators)—*e. g.*, the use of a firearm or other dangerous weapon, infliction of great bodily injury, Penal Code §§ 12022, 12022.7–.8 (West 2000 and Supp. 2006)—to be charged in the indictment and proved to a jury beyond a reasonable doubt. 35 Cal. 4th, at 1257, 113 P. 3d, at 545.

The *Black* court's examination of the DSL, in short, satisfied it that California's sentencing system does not implicate

significantly the concerns underlying the Sixth Amendment's jury-trial guarantee. Our decisions, however, leave no room for such an examination. Asking whether a defendant's basic jury-trial right is preserved, though some facts essential to punishment are reserved for determination by the judge, we have said, is the *very* inquiry *Apprendi*'s "bright-line rule" was designed to exclude. See *Blakely*, 542 U. S., at 307–308. But see *Black*, 35 Cal. 4th, at 1260, 113 P. 3d, at 547 (stating, remarkably, that "[t]he high court precedents do not draw a bright line").[14]

Ultimately, the *Black* court relied on an equation of California's DSL system to the post-*Booker* federal system. "The level of discretion available to a California judge in selecting which of the three available terms to impose," the court said, "appears comparable to the level of discretion that the high court has chosen to permit federal judges in post-*Booker* sentencing." 35 Cal. 4th, at 1261, 113 P. 3d, at 548. The same equation drives JUSTICE ALITO's dissent. See *post*, at 297 ("The California sentencing law . . . is indistinguishable in any constitutionally significant respect from the advisory Guidelines scheme that the Court approved in *[Booker]*.").

The attempted comparison is unavailing. As earlier explained, see *supra*, at 284–286, this Court in *Booker* held the Federal Sentencing Guidelines incompatible with the Sixth Amendment because the Guidelines were "mandatory and impose[d] binding requirements on all sentencing judges." 543 U. S., at 233. "[M]erely advisory provisions," recommending but not requiring "the selection of particular sen-

[14] JUSTICE KENNEDY urges a distinction between facts concerning the offense, where *Apprendi* would apply, and facts concerning the offender, where it would not. *Post*, at 295 (dissenting opinion). *Apprendi* itself, however, leaves no room for the bifurcated approach JUSTICE KENNEDY proposes. See 530 U. S., at 490 ("*[A]ny* fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (emphasis added)).

tences in response to differing sets of facts," all Members of the Court agreed, "would not implicate the Sixth Amendment." *Ibid.* To remedy the constitutional infirmity found in *Booker*, the Court's majority excised provisions that rendered the system mandatory, leaving the Guidelines in place as advisory only. *Id.*, at 245–246. See also *supra*, at 286–287.

California's DSL does not resemble the advisory system the *Booker* Court had in view. Under California's system, judges are not free to exercise their "discretion to select a specific sentence within a defined range." *Booker*, 543 U. S., at 233. California's Legislature has adopted sentencing triads, three fixed sentences with no ranges between them. Cunningham's sentencing judge had no discretion to select a sentence within a range of 6 to 16 years. Her instruction was to select 12 years, nothing less and nothing more, unless she found facts allowing the imposition of a sentence of 6 or 16 years. Factfinding to elevate a sentence from 12 to 16 years, our decisions make plain, falls within the province of the jury employing a beyond-a-reasonable-doubt standard, not the bailiwick of a judge determining where the preponderance of the evidence lies.

Nevertheless, the *Black* court attempted to rescue the DSL's judicial factfinding authority by typing it simply a reasonableness constraint, equivalent to the constraint operative in the federal system post-*Booker*. See 35 Cal. 4th, at 1261, 113 P. 3d, at 548 ("Because an aggravating factor under California law may include any factor that the judge reasonably deems relevant, the [DSL's] requirement that an upper term sentence be imposed only if an aggravating factor exists is comparable to *Booker*'s requirement that a federal judge's sentencing decision not be unreasonable."). Reasonableness, however, is not, as the *Black* court would have it, the touchstone of Sixth Amendment analysis. The reasonableness requirement *Booker* anticipated for the federal system operates *within* the Sixth Amendment constraints delineated in our precedent, not as a substitute for those

constraints. Because the DSL allocates to judges sole authority to find facts permitting the imposition of an upper term sentence, the system violates the Sixth Amendment. It is comforting, but beside the point, that California's system requires judge-determined DSL sentences to be reasonable. *Booker*'s remedy for the Federal Guidelines, in short, is not a recipe for rendering our Sixth Amendment case law toothless.[15]

To summarize: Contrary to the *Black* court's holding, our decisions from *Apprendi* to *Booker* point to the middle term specified in California's statutes, not the upper term, as the relevant statutory maximum. Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the system cannot withstand measurement against our Sixth Amendment precedent.[16]

IV

As to the adjustment of California's sentencing system in light of our decision, "[t]he ball . . . lies in [California's]

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[15] JUSTICE ALITO, however, would do just that. His opinion reads the remedial portion of the Court's opinion in *Booker* to override *Blakely*, and to render academic the entire first part of *Booker* itself. *Post*, at 310–311. There would have been no majority in *Booker* for the revision of *Blakely* essayed in his dissent. Grounded in a notion of how federal reasonableness review operates in practice, JUSTICE ALITO "necessarily anticipates" a question that will be aired later this Term in *Rita* and *Claiborne*. *Post*, at 311. See *supra*, at 287–288, n. 13. While we do not forecast the Court's responses in those cases, we affirm the continuing vitality of our prior decisions in point.

[16] Respondent and its *amici* argue that whatever this Court makes of California's sentencing law, the *Black* court's "construction" of that law as consistent with the Sixth Amendment is authoritative. Brief for Respondent 6, 18, 33; Brief for State of Hawaii et al. as *Amici Curiae* 17, 29. We disagree. The *Black* court did not modify California law so as to align it with this Court's Sixth Amendment precedent. See 35 Cal. 4th, at 1273, 113 P. 3d, at 555–556 (Kennard, J., concurring and dissenting). Rather, it construed this Court's decisions in an endeavor to render them consistent with California law. The *Black* court's interpretation of federal constitutional law plainly does not qualify for this Court's deference.

court." *Booker*, 543 U. S., at 265; cf. *supra*, at 288. We note that several States have modified their systems in the wake of *Apprendi* and *Blakely* to retain determinate sentencing. They have done so by calling upon the jury—either at trial or in a separate sentencing proceeding—to find any fact necessary to the imposition of an elevated sentence.[17] As earlier noted, California already employs juries in this manner to determine statutory sentencing enhancements. See *supra*, at 280, 290. Other States have chosen to permit judges genuinely "to exercise broad discretion . . . within a statutory range,"[18] which, "everyone agrees," encounters no Sixth Amendment shoal. *Booker*, 543 U. S., at 233. California may follow the paths taken by its sister States or otherwise alter its system, so long as the State observes Sixth Amendment limitations declared in this Court's decisions.

* * *

For the reasons stated, the judgment of the California Court of Appeal is reversed in part, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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[17] States that have so altered their systems are Alaska, Arizona, Kansas, Minnesota, North Carolina, Oregon, and Washington. Alaska Stat. §§12.55.155(f), 12.55.125(c) (2004); Ariz. Rev. Stat. Ann. §13–702.01 (West Supp. 2006); Kan. Stat. Ann. §§21–4716(b), 21–4718(b) (2005 Supp.); Minn. Stat. §244.10, subd. 5 (2005 Supp.); N. C. Gen. Stat. Ann. §15A–1340.16(a1) (Lexis 2005); 2005 Ore. Sess. Laws, ch. 463, §§3(1), 4(1); Wash. Rev. Code §§9.94A.535, 9.94A.537 (2006). The Colorado Supreme Court has adopted this approach as an interim solution. *Lopez* v. *People*, 113 P. 3d 713, 716 (2005) (en banc). See also Stemen & Wilhelm, Finding the Jury: State Legislative Responses to *Blakely* v. *Washington*, 18 Fed. Sentencing Rptr. 7 (Oct. 2005) (majority of affected States have retained determinate sentencing systems).

[18] See Ind. Code §35–50–2–1.3(a) (West Supp. 2006); Tenn. Code Ann. §40–35–210(c) (2005 Supp.).

JUSTICE KENNEDY, with whom JUSTICE BREYER joins, dissenting.

The dissenting opinion by JUSTICE ALITO, which I join in full, well explains why the Court continues in a wrong and unfortunate direction in the cases following *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). See, *e. g.*, *United States* v. *Booker*, 543 U. S. 220, 326–334 (2005) (BREYER, J., dissenting in part); *Blakely* v. *Washington*, 542 U. S. 296, 314–324 (2004) (O'Connor, J., dissenting); *id.*, at 326–328 (KENNEDY, J., dissenting); see also *Apprendi*, *supra*, at 523–554 (O'Connor, J., dissenting); *Jones* v. *United States*, 526 U. S. 227, 264–272 (1999) (KENNEDY, J., dissenting). The discussion in his dissenting opinion is fully sufficient to show why, in my respectful view, the Court's analysis and holding are mistaken. It does seem appropriate to add this brief, further comment.

In my view the *Apprendi* line of cases remains incorrect. Yet there may be a principled rationale permitting those cases to control within the central sphere of their concern, while reducing the collateral, widespread harm to the criminal justice system and the corrections process now resulting from the Court's wooden, unyielding insistence on expanding the *Apprendi* doctrine far beyond its necessary boundaries. The Court could distinguish between sentencing enhancements based on the nature of the offense, where the *Apprendi* principle would apply, and sentencing enhancements based on the nature of the offender, where it would not. California attempted to make this initial distinction. Compare Cal. Rule of Court 4.421(a) (Criminal Cases) (West 2006) (listing aggravating "[f]acts relating to the crime") with Rule 4.421(b) (listing aggravating "[f]acts relating to the defendant"). The Court should not foreclose its efforts.

California, as the Court notes, experimented earlier with an indeterminate sentencing system. *Ante*, at 276–277. The State reposed vast power and discretion in a nonjudicial agency to set a release date for convicted felons. That sys-

tem, it seems, would have been untouched by *Apprendi*. When the State sought to reform its system, it might have chosen to give its judges the authority to sentence to a maximum but to depart downward for unexplained reasons. That too, by considerable irony, would be untouched by *Apprendi*. Instead, California sought to use a system based on guided discretion. *Apprendi*, the Court holds today, forecloses this option.

As dissenting opinions have suggested before, the Constitution ought not to be interpreted to strike down all aspects of sentencing systems that grant judicial discretion with some legislative direction and control. Judges and legislators must have the capacity to develop consistent standards, standards that individual juries empaneled for only a short time cannot elaborate in any permanent way. See, *e. g.*, *Blakely*, 542 U. S., at 314 (opinion of O'Connor, J.); *id.*, at 326–327 (opinion of KENNEDY, J.) (explaining that "[s]entencing guidelines are a prime example of [the] collaborative process" between courts and legislatures). Judges and sentencing officials have a broad view and long-term commitment to correctional systems. Juries do not. Judicial officers and corrections professionals, under the guidance and control of the legislature, should be encouraged to participate in an ongoing manner to improve the various sentencing schemes in our country.

This system of guided discretion would be permitted to a large extent if the Court confined the *Apprendi* rule to sentencing enhancements based on the nature of the offense. These would include, for example, the fact that a weapon was used; violence was employed; a stated amount of drugs or other contraband was involved; or the crime was motivated by the victim's race, gender, or other status protected by statute. Juries could consider these matters without serious disruption because these factors often are part of the statutory definition of an aggravated crime in any event and

because the evidence to support these enhancements is likely to be a central part of the prosecution's case.

On the other hand, judicial determination is appropriate with regard to factors exhibited by the defendant. These would include, for example, prior convictions; cooperation or noncooperation with law enforcement; remorse or the lack of it; or other aspects of the defendant's history bearing upon his background and contribution to the community. This is so even if the relevant facts were to be found by the judge by a preponderance of the evidence. These are facts that should be taken into account at sentencing but have little if any significance for whether the defendant committed the crime. See Berman & Bibas, Making Sentencing Sensible, 4 Ohio St. J. Crim. L. 37, 55–57 (2006).

The line between offense and offender would not always be clear, but in most instances the nature of the offense is defined in a manner that ensures the problem of categories would not be difficult. *Apprendi* suffers from a similar line-drawing problem between facts that must be considered by the jury and other considerations that a judge can take into account. The main part of the *Apprendi* holding could be retained with far less systemic disruption. It is to be regretted that the Court's decision today appears to foreclose consideration of this approach or other reasonable efforts to develop systems of guided discretion within the general constraint that *Apprendi* imposes.

JUSTICE ALITO, with whom JUSTICE KENNEDY and JUSTICE BREYER join, dissenting.

The California sentencing law that the Court strikes down today is indistinguishable in any constitutionally significant respect from the advisory Guidelines scheme that the Court approved in *United States* v. *Booker*, 543 U. S. 220 (2005). Both sentencing schemes grant trial judges considerable discretion in sentencing; both subject the exercise of that

discretion to appellate review for "reasonableness"; and both—the California law explicitly, and the federal scheme implicitly—require a sentencing judge to find some factor to justify a sentence above the minimum that could be imposed based solely on the jury's verdict. Because this Court has held unequivocally that the post-*Booker* federal sentencing system satisfies the requirements of the Sixth Amendment, the same should be true with regard to the California system. I therefore respectfully dissent.

I

In *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000), and the cases that have followed in its wake, the Court has held that under certain circumstances a criminal defendant possesses the Sixth Amendment right to have a jury find facts that result in an increased sentence. The Court, however, has never suggested that all factual findings that affect a defendant's sentence must be made by a jury. On the contrary, in *Apprendi* and later cases, the Court has consistently stated that when a trial court makes a fully discretionary sentencing decision (such as a sentencing decision under the pre-Sentencing Reform Act of 1984 federal sentencing system), the Sixth Amendment permits the court to base the sentence on its own factual findings. See *id.*, at 481; *Blakely* v. *Washington*, 542 U. S. 296, 305 (2004); *Booker*, *supra*, at 233; see also *Harris* v. *United States*, 536 U. S. 545, 558 (2002) (plurality opinion).[1]

[1]The Court's recognition of this is hardly surprising since, as Judge McConnell has pointed out, "fully discretionary sentencing . . . was the system [that was] in place when the Sixth Amendment was adopted" and that "prevailed in the federal courts from the Founding until enactment of the Sentencing Reform Act of 1984 . . . without anyone ever suggesting a conflict with the Sixth Amendment." The *Booker* Mess, 83 Denver U. L. Rev. 665, 679 (2006). Indeed, the original federal criminal statute enacted by the First Congress set forth indeterminate sentencing ranges for a variety of offenses, leaving the determination of the precise sentence to the judge's discretion. See, *e. g.*, Act of Apr. 30, 1790, ch. 9, §2, 1 Stat.

Applying this rule, the *Booker* Court unanimously agreed that judicial factfinding under a purely advisory guidelines system would likewise comport with the Sixth Amendment. Writing for the five Justices who struck down the mandatory Federal Sentencing Guidelines system, JUSTICE STEVENS stated:

> "If the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment. We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range. . . . For when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant." *Booker*, *supra*, at 233.[2]

In a similar vein, the remedial portion of the Court's opinion in *Booker*, written by JUSTICE BREYER, held that the Sixth Amendment permits a system of advisory guidelines with reasonableness review.[3] JUSTICE BREYER's opinion

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112 (crime of misprision of treason punishable by imprisonment not exceeding seven years and fine not exceeding $1,000); § 6, *id.*, at 113 (crime of misprision of a felony punishable by imprisonment not exceeding three years and fine not exceeding $500); § 15, *id.*, at 115–116 (crime of falsifying federal records punishable by imprisonment not exceeding seven years, fine not exceeding $5,000, and whipping not exceeding 39 stripes); see generally Little & Chen, The Lost History of *Apprendi* and the *Blakely* Petition for Rehearing, 17 Fed. Sentencing Rptr. 69 (2004).

[2] The four Justices who would have upheld the constitutionality of the mandatory Federal Sentencing Guidelines system did not, of course, disagree with this basic point. Indeed, they were of the view that "[h]istory does not support a 'right to jury trial' in respect to sentencing facts." *Booker*, 543 U. S., at 328 (BREYER, J., dissenting in part).

[3] While the dissenters from the remedial portion of the Court's opinion disagreed with JUSTICE BREYER's severability analysis, they did not sug-

avoided a blanket invalidation of the Guidelines by excising the provision of the Sentencing Reform Act, 18 U. S. C. §3553(b)(1) (2000 ed., Supp. IV), that required a sentencing judge to impose a sentence within the applicable Guidelines range. See *Booker*, 543 U. S., at 259. As JUSTICE BREYER explained, "the existence of §3553(b)(1) is a necessary condition of the constitutional violation. That is to say, without this provision . . . the statute falls outside the scope of *Apprendi*'s requirement." *Ibid.*

Under the post-*Booker* federal sentencing system, "[t]he district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing." *Id.*, at 264. In addition, sentencing courts must take account of the general sentencing goals set forth by Congress, including avoiding unwarranted sentencing disparities, providing restitution to victims, reflecting the seriousness of the offense, promoting respect for the law, providing just punishment, affording adequate deterrence, protecting the public, and effectively providing the defendant with needed educational or vocational training and medical care. See *id.*, at 260 (citing 18 U. S. C. §3553(a) (2000 ed. and Supp. IV)).

It is significant that *Booker*, while rendering the Guidelines advisory, did not reinstitute the pre-Guidelines federal sentencing system, under which "well-established doctrine bar[red] review of the exercise of sentencing discretion" within the broad sentencing ranges imposed by the criminal statutes. *Dorszynski* v. *United States*, 418 U. S. 424, 443 (1974). Rather, *Booker* conditioned a district court's sentencing discretion on appellate review for "reasonable-

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gest that the resulting "advisory Guidelines" structure was unconstitutional. Rather, they recognized—as JUSTICE STEVENS explained in his portion of the Court's opinion—that "[i]f the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment." *Id.*, at 233.

ness" in light of the Guidelines and the §3553(a) factors. See *Booker*, *supra*, at 261 ("Section 3553(a) remains in effect, and sets forth numerous factors that guide sentencing. Those factors in turn will guide appellate courts, as they have in the past, in determining whether a sentence is unreasonable").

Although the *Booker* Court did not spell out in detail how sentencing judges are to proceed under the new advisory Guidelines regime, it seems clear that this regime permits—and, indeed, requires—sentencing judges to make factual findings and to base their sentences on those findings. The federal criminal statutes generally set out wide sentencing ranges, and thus in each case a sentencing judge must use some criteria in selecting the sentence to be imposed. In doing this, federal judges have generally made and relied upon factual determinations about the nature of the offense and the offender—and it is impossible to imagine how federal judges could reasonably carry out their sentencing responsibilities without making such factual determinations.

Under the mandatory Federal Sentencing Guidelines regime, these factual determinations were relatively formal and precise. (For example, a trial judge under that regime might have found based on a post-trial proceeding that a drug offense involved six kilograms of cocaine or that the loss caused by a mail fraud offense was $2.5 million.) By contrast, under the pre-Sentencing Reform Act federal system, the factual determinations were often relatively informal and imprecise. (A trial judge might have concluded from the presentence report that an offense involved "a large quantity of drugs" or that a mail fraud scheme caused "a great loss.") Under both systems, however, the judges made factual determinations about the nature of the offense and the offender and determined the sentence accordingly. And as the Courts of Appeals have unanimously concluded, the post-*Booker* federal sentencing regime also permits trial judges to make such factual findings and to rely on those

findings in selecting the sentences that are appropriate in particular cases.[1]

Under the post-*Booker* system, if a defendant believes that his or her sentence was based on an erroneous factual determination, it seems clear that the defendant may challenge that finding on appeal. As noted, the post-*Booker* system permits a defendant to obtain appellate review of the reasonableness of a sentence, and a sentence that the sentencing court justifies solely on the basis of an erroneous finding of fact can hardly be regarded as reasonable. Thus, under the post-*Booker* system, there will be cases—and, in all likelihood, a good many cases—in which the question whether a defendant will be required to serve a greater or lesser sentence depends on whether a court of appeals sustains a finding of fact made by the sentencing judge.

A simple example illustrates this point. Suppose that a defendant is found guilty of 10 counts of mail fraud in that the defendant made 10 mailings in furtherance of a scheme to defraud. See 18 U. S. C. § 1341 (2000 ed., Supp. IV). Under the mail fraud statute, the district court would have discretion to sentence the defendant to any sentence ranging from probation up to 200 years of imprisonment (20 years on each count). Suppose that the sentencing judge imposes the maximum sentence allowed by statute—200 years of imprisonment—without identifying a single fact about the offense

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[1] Every Court of Appeals to address the issue has held that a district court sentencing post-*Booker* may rely on facts found by the judge by a preponderance of the evidence. See *United States* v. *Kilby*, 443 F. 3d 1135, 1141 (CA9 2006); *United States* v. *Cooper*, 437 F. 3d 324, 330 (CA3 2006); *United States* v. *Vaughn*, 430 F. 3d 518, 525–526 (CA2 2005); *United States* v. *Morris*, 429 F. 3d 65, 72 (CA4 2005); *United States* v. *Price*, 418 F. 3d 771, 788 (CA7 2005); *United States* v. *Magallanez*, 408 F. 3d 672, 684–685 (CA10 2005); *United States* v. *Pirani*, 406 F. 3d 543, 551, n. 4 (CA8 2005) (en banc); *United States* v. *Yagar*, 404 F. 3d 967, 972 (CA6 2005); *United States* v. *Mares*, 402 F. 3d 511, 519, and n. 6 (CA5 2005); *United States* v. *Duncan*, 400 F. 3d 1297, 1304–1305 (CA11 2005); *United States* v. *Antonakopoulos*, 399 F. 3d 68, 74 (CA1 2005).

or the offender as a justification for this lengthy sentence. Surely that would be an unreasonable sentence that could not be sustained on appeal.

Suppose, alternatively, that the sentencing court finds that the mail fraud scheme caused a loss of $1 million and that the victims were elderly people of limited means, and suppose that the court, based on these findings, imposes a sentence of 10 years of imprisonment. If the defendant challenges the sentence on appeal on the ground that these findings are erroneous, the question whether the defendant will be required to serve 10 years or some lesser sentence may well depend on the validity of the district court's findings of fact.

Booker, then, approved a sentencing system that (1) requires a sentencing judge to "consult" and "take into account" legislatively defined sentencing factors and guidelines; (2) subjects a sentencing judge's exercise of sentencing discretion to appellate review for "reasonableness"; and (3) requires sentencing judges to make factual findings in order to support the exercise of this discretion.

II

The California sentencing law that the Court strikes down today is not meaningfully different from the federal scheme upheld in *Booker*.

As an initial matter, the California law gives a judge at least as much sentencing discretion as does the post-*Booker* federal scheme. California's system of sentencing triads and separate "enhancements"[5] was enacted to achieve sentences "in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion." Cal. Penal Code Ann. § 1170(a)(1) (West Supp. 2006). This "specified discretion" is quite

[5] These enhancements, which add additional years onto the base-term triad selected by the court, see *ante*, at 280, must be pleaded and proved to a jury beyond a reasonable doubt. They are not at issue in this case.

broad. Under the statute, a sentencing court "shall order imposition of the middle term" of the base-term triad, "unless there are circumstances in aggravation or mitigation of the crime." § 1170(b). While the court may not rely on any fact that is an essential element of the crime or of a proven enhancement, the "sentencing judge retains considerable discretion to identify aggravating factors." *People* v. *Black*, 35 Cal. 4th 1238, 1247, 113 P. 3d 534, 538 (2005).

In exercising its sentencing discretion, a California court can look to any of the 16 specific aggravating circumstances, see Cal. Rule of Court 4.421 (Criminal Cases) (West 2006), or 15 specific mitigating circumstances, see Rule 4.423, itemized in the California Rules of Court. A California trial court can also consider the "[g]eneral objectives of sentencing," including protecting society, punishing the defendant, encouraging the defendant to lead a law-abiding life and deterring the defendant from committing future offenses, deterring others from criminal conduct by demonstrating its consequences, preventing the defendant from committing new crimes by means of incarceration, securing restitution for crime victims, and achieving uniformity in sentencing.[6] Rule 4.410(a). And if a California trial court finds that its sentencing authority is unduly restricted by these factors, which the California Supreme Court has recognized "are largely the articulation of considerations sentencing judges have always used in making these decisions," *People* v. *Hernandez*, 46 Cal. 3d 194, 205, 757 P. 2d 1013, 1019 (1988), overruled on other grounds, *People* v. *King*, 5 Cal. 4th 59, 78, n. 5, 851 P. 2d 27, 39, n. 5 (1993), a California sentencing judge is also authorized to consider any "additional criteria reasonably related to the decision being made," Rule

[6]These factors are similar to the federal sentencing policies set forth in 18 U. S. C. § 3553(a) (2000 ed. and Supp. IV), which directs a court to consider, among other things, the need to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence to criminal conduct, and to protect the public.

4.408(a); see also *Black*, *supra*, at 1256, 113 P. 3d, at 544 ("The Legislature did not identify all of the particular facts that could justify the upper term").[7]

In short, under California law, the "'circumstances' the sentencing judge may look to in aggravation or in mitigation of the crime include . . . 'practically everything which has a legitimate bearing' on the matter in issue." *People* v. *Guevara*, 88 Cal. App. 3d 86, 93, 151 Cal. Rptr. 511, 516 (1979); see also Rule 4.410(b) ("The sentencing judge should be guided by statutory statements of policy, the criteria in these rules, and the facts and circumstances of the case"). Indeed, as one California court has explained, sentencing discretion may even be guided by a "judge's subjective determination of . . . the appropriate aggregate sentence" based on his "experiences with prior cases and the record in the defendant's case." *People* v. *Stevens*, 205 Cal. App. 3d 1452, 1457, 253 Cal. Rptr. 173, 177 (1988). "A judge's subjective belief regarding the length of the sentence to be imposed is not improper as long as it is channeled by the guided

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[7] As the California Supreme Court explained in *Black*:

"In adopting the sentencing rules, the Judicial Council considered and rejected proposals that the rules provide an exclusive list of sentencing criteria and that the criteria be assigned specific weights, on the ground that the Legislature intended to give the sentencing judge discretion in selecting among the lower, middle, and upper terms. The report on which the Judicial Council acted in adopting the rules explains that 'an exclusive listing would be inconsistent with the statutory mandate to adopt "rules providing criteria for the consideration of the trial judge" [§ 1170.3] since this language does not purport to limit the discretion afforded the court in each of the five enumerated sentencing decisions, but calls for criteria which will assist the courts in the exercise of that discretion.' (Judicial Council of Cal., Advisory Com. Rep., Sentencing Rules and Sentencing Reporting System (1977) p. 6.) 'Any attempt to impose a weighting system on trial courts . . . would be an infringement on the sentencing power of the court.' (*Id.*, p. 8.) 'The substantive law, and section 1170(a)(1), give discretion to the trial court; the rules can guide, but cannot compel, the exercise of that discretion.' (*Id.*, p. 11.)" 35 Cal. 4th, at 1256, n. 11, 113 P. 3d, at 544, n. 11.

discretion outlined in the myriad of statutory sentencing criteria." *Ibid.*

The California scheme—like the federal "advisory Guidelines"—does require that this discretion be exercised *reasonably*. Indeed, the California Supreme Court, authoritatively construing the California statute,[8] has explained that § 1170(b)'s "requirement that an aggravating factor exist is merely a requirement that the decision to impose the upper term be *reasonable*." *Black*, 35 Cal. 4th, at 1255, 113 P. 3d, at 544 (emphasis in original); see also *id.*, at 1257–1258, 113 P. 3d, at 545 ("The jury's verdict of guilty on an offense authorizes the judge to sentence a defendant to any of the three terms specified by statute as the potential punishments for that offense, as long as the judge exercises his or her discretion in a reasonable manner that is consistent with the requirements and guidelines contained in statutes and court rules"). Even when a court imposes the "presumptive" middle term, its decision is reviewable for abuse of discretion—that is, its decision to sentence at the "standard" term must be reasonable. See *People* v. *Cattaneo*, 217 Cal. App. 3d 1577, 1587–1588, 266 Cal. Rptr. 710, 716 (1990).

Moreover, the California system, like the post-*Booker* federal regime, recognizes that a sentencing judge must have the ability to look at *all* the relevant facts—even those outside the trial record and jury verdict—in exercising his or

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[8]The Court correctly notes that we need not defer to the California Supreme Court's construction of federal law, including its judgment as to whether California law is consistent with our Sixth Amendment jurisprudence. See *ante*, at 293, n. 16. But the California Supreme Court's exposition of California law is authoritative and binding on this Court. See, *e. g.*, *Mullaney* v. *Wilbur*, 421 U. S. 684, 691 (1975) ("[S]tate courts are the ultimate expositors of state law [and] we are bound by their constructions except in extreme circumstances"); *Wainwright* v. *Goode*, 464 U. S. 78, 84 (1983) *(per curiam)* ("[T]he views of the State's highest court with respect to state law are binding on the federal courts"); *Ring* v. *Arizona*, 536 U. S. 584, 603 (2002) (recognizing the Arizona Supreme Court's construction of Arizona sentencing law as authoritative).

her discretion. "The judicial factfinding that occurs during that selection process is the same type of judicial factfinding that traditionally has been a part of the sentencing process." *Black*, *supra*, at 1258, 113 P. 3d, at 545.

III

Despite these similarities between the California system and the "advisory Guidelines" scheme approved in *Booker*, the Court nevertheless holds that the California regime runs afoul of the Sixth Amendment. The Court reasons as follows: (1) California requires that some aggravating fact, apart from the elements of the offense found by the jury, must support an upper term sentence; (2) *Blakely* defined the "statutory maximum" to be "the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*," 542 U. S., at 303 (emphasis in original); and therefore (3) the California regime violates "*Apprendi*'s bright-line rule," *id.*, at 308, that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt," *Apprendi*, 530 U. S., at 490.

This argument is flawed. For one thing, it is not at all clear that a California court must find some case-specific, adjudicative "fact" (as opposed to identifying a relevant policy consideration) before imposing an upper term sentence. What a California sentencing court must find is a "*circumstanc[e] in aggravation*," Cal. Penal Code Ann. §1170(b) (emphasis added), which, California's Court Rules make clear, can include any "criteria reasonably related to the decision being made," Rule 4.408(a).

California courts are thus empowered to take into account the full panoply of factual and policy considerations that have traditionally been considered by judges operating under fully discretionary sentencing regimes—the constitutionality of which the Court has repeatedly reaffirmed. California law

explicitly authorizes a sentencing court to take into account, for example, broad sentencing objectives like punishment, deterrence, restitution, and uniformity, see Rule 4.410, and even a judge's "subjective belief" as to the appropriateness of the sentence, see *Stevens*, 205 Cal. App. 3d, at 1457, 253 Cal. Rptr., at 177, as long as the final result is reasonable.[9] Policy considerations like these have always been outside the province of the jury and do not implicate the Sixth Amendment concerns expressed in *Apprendi*.

In short, the requirement that a California court find some "circumstanc[e] in aggravation" before imposing an upper term sentence is not the same as a requirement that it find an aggravating *fact*. And if a California sentencing court need not find a fact beyond those "reflected in the jury verdict or admitted by the defendant," *Blakely*, *supra*, at 303 (emphasis deleted), then *Apprendi*'s "bright-line rule" plainly does not apply.[10]

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[9] The State of California acknowledged in its brief that "[t]he court can rely on essentially any reason placing the defendant's particular offense outside the mean when selecting" which term of the triad to impose. Brief for Respondent 32. As California's counsel acknowledged at oral argument, a concern for deterrence in light of an uptick in crime in a particular community, for example, could be a "circumstanc[e] in aggravation" supporting imposition of an upper term sentence under California law, even though that concern is not based on judge-found, case-specific facts. See Tr. of Oral Arg. 32–40.

[10] It is true that California's Court Rules also itemize more concrete aggravating circumstances that they label "[f]acts relating to the crime" and "[f]acts relating to the defendant." See Cal. Rules of Court 4.421 and 4.423 (Criminal Cases) (West 2006). But these lists are not exhaustive, and they do not impair a court's ability to take into account more general sentencing objectives in deciding whether to sentence a defendant to the upper term. The Rules' provision that "[c]ircumstances in aggravation and mitigation shall be established by a preponderance of the evidence," Rule 4.420(b), is clearly meant to cover the types of crime- and defendant-specific adjudicative facts set forth in the Rules immediately following; there is nothing to suggest that this provision excludes consideration of more general sentencing objectives that are not conducive to such trial-type proof. As the Rules explicitly recognize, these different categories

But even if the California law did require that a sentencing court find some aggravating "fact" before imposing an upper term sentence, that would not make this case constitutionally distinguishable from *Booker*. As previously explained, the "advisory Guidelines," bounded by reasonableness review, effectively (albeit less explicitly) impose the same requirement on federal judges. *Booker*'s reasonableness review necessarily supposes that some sentences will be unreasonable in the absence of additional facts justifying them. (Recall the prior hypothetical case in which it was posited that the district court imposed a sentence of 200 years of imprisonment for mail fraud without citing a single aggravating fact about the offense or the offender.) Thus, although the post-*Booker* Guidelines are labeled "advisory," reasonableness review imposes a very real constraint on a judge's ability to sentence across the full statutory range without finding some aggravating fact.[11]

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of sentencing considerations are not mutually exclusive. See Rule 4.410(b) ("The sentencing judge should be guided by statutory statements of policy, the criteria in these rules, and the facts and circumstances of the case").

[11] The Court believes that in order to reach this conclusion, I must "previe[w] . . . how 'reasonableness review,' post-*Booker*, works," *ante*, at 287–288, n. 13, and perhaps even prejudge this Court's forthcoming decisions in *Rita* v. *United States* and *Claiborne* v. *United States*, *ante*, at 293, n. 15. But my point is much more modest. We need not map all the murky contours of the post-*Booker* landscape in order to conclude that reasonableness review must mean *something*. If reasonableness review is more than just an empty exercise, there inevitably will be *some* sentences that, absent any judge-found aggravating fact, will be unreasonable. One need not embrace any presumption of reasonableness or unreasonableness to accept this simple point. If this is the case—and I cannot see how it is not, given the Court's endorsement of reasonableness review in *Booker*—then there is no meaningful Sixth Amendment difference between California's sentencing system and the post-*Booker* "advisory Guidelines." Under both, a sentencing judge operating under a reasonableness constraint must find facts beyond the jury's verdict in order to justify the imposition of at least some sentences at the high end of the statutory range.

The Court downplays the significance of *Booker* reasonableness review on the ground that *Booker*-style "reasonableness . . . operates *within* the Sixth Amendment constraints delineated in our precedent, not as a substitute for those constraints." *Ante*, at 292–293 (emphasis in original). But this begs the question, which concerns the scope of those "Sixth Amendment constraints." That question is answered by the Court's remedial holding in *Booker*, which necessarily stands for the proposition that it is consistent with the Sixth Amendment for the imposition of an enhanced sentence to be conditioned on a factual finding made by a sentencing judge and not by a jury.

The Court relies heavily on *Blakely*'s admonition that "the 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*." 542 U. S., at 303 (emphasis in original). But the Court fails to recognize how this statement must be understood in the wake of *Booker*.

For each statutory offense, there must be a sentence that represents the least onerous sentence that can be regarded as reasonable in light of the bare statutory elements found by the jury. To return to our prior example of a mail fraud offense, there must be some sentence that represents the least onerous sentence that would be appropriate in a case in which the statutory elements of mail fraud are satisfied but in which the offense and the offender are as little deserving of punishment as can be imagined. (Whether this sentence is the statutory minimum (probation, see 18 U. S. C. § 1341 (2000 ed., Supp. IV)) or the minimum under the advisory Guidelines (also probation, see United States Sentencing Commission, Guidelines Manual §2B1.1 and Sentencing Table (Nov. 2006)) is irrelevant for present purposes; what is relevant is that there must be *some* minimum reasonable sentence.) This sentence is "the maximum sentence" that could reasonably be imposed "solely on the basis of the facts

reflected in the jury verdict or admitted by the defendant." *Blakely*, *supra*, at 303 (emphasis deleted).

Booker's reasonableness review necessarily anticipates that the imposition of sentences above this level may be conditioned upon findings of fact made by a judge and not by the jury. *Booker* held that a system of "advisory Guidelines" with reasonableness review is consistent with the Sixth Amendment, and the same analysis should govern California's "requirement that the decision to impose the upper term be *reasonable*." *Black*, 35 Cal. 4th, at 1255, 113 P. 3d, at 544 (emphasis in original). That the California requirement is explicit, while the federal aggravating factor requirement is (at least for now) implicit, should not be constitutionally dispositive.

Unless the Court is prepared to overrule the remedial decision in *Booker*, the California sentencing scheme at issue in this case should be held to be consistent with the Sixth Amendment. I would therefore affirm the decision of the California Court of Appeal.

Syllabus

WEYERHAEUSER CO. *v.* ROSS-SIMMONS HARDWOOD LUMBER CO., INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 05–381. Argued November 28, 2006—Decided February 20, 2007

Respondent Ross-Simmons, a sawmill, filed suit under § 2 of the Sherman Act, alleging that petitioner Weyerhaeuser drove it out of business by bidding up the price of sawlogs to a level that prevented Ross-Simmons from being profitable. The District Court, *inter alia*, rejected Weyerhaeuser's proposed predatory-bidding jury instructions that incorporated elements of the test applied to predatory-pricing claims in *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209. The jury returned a verdict against Weyerhaeuser. The Ninth Circuit affirmed, rejecting Weyerhaeuser's argument that *Brooke Group*'s standard should apply to predatory-bidding claims.

Held: The test this Court applied to predatory-pricing claims in *Brooke Group* also applies to predatory-bidding claims. Pp. 318–326.

(a) Predatory pricing is a scheme in which the predator reduces the sale price of its product hoping to drive competitors out of business and, once competition has been vanquished, raises prices to a supracompetitive level. *Brooke Group* established two prerequisites to recovery on a predatory-pricing claim: First, a plaintiff must show that the prices complained of are below cost, 509 U. S., at 222, because allowing recovery for above-cost price cutting could chill conduct—price cutting—that directly benefits consumers. Second, a plaintiff must show that the alleged predator had "a dangerous probabilit[y] of recouping its investment in below-cost pric[ing]," *id.*, at 224, because without such a probability, it is highly unlikely that a firm would engage in predatory pricing. The costs of erroneous findings of predatory-pricing liability are quite high because "'[t]he mechanism by which a firm engages in predatory pricing—lowering prices—is the same mechanism by which a firm stimulates competition,'" and, therefore, mistaken liability findings would "'"chill the very conduct the antitrust laws are designed to protect."'" *Id.*, at 226. Pp. 318–320.

(b) Predatory bidding involves the exercise of market power on the market's buy, or input, side. To engage in predatory bidding, a purchaser bids up the market price of an input so high that rival buyers cannot survive, thus acquiring monopsony power, which is market power on the buy side of the market. Once a predatory bidder causes

competing buyers to exit the market, it will attempt to drive down input prices to reap supracompetitive profits that will at least offset the losses it suffered in bidding up input prices. Pp. 320–321.

(c) Predatory-pricing and predatory-bidding claims are analytically similar. And the close theoretical connection between monopoly and monopsony suggests that similar legal standards should apply to both sorts of claims. Both involve the deliberate use of unilateral pricing measures for anticompetitive purposes and both require firms to incur certain short-term losses on the chance that they might later make supracompetitive profits. More importantly, predatory bidding mirrors predatory pricing in respects deemed significant in *Brooke Group*. Because rational businesses will rarely suffer short-term losses in hopes of reaping supracompetitive profits, *Brooke Group*'s conclusion that "'predatory pricing schemes are rarely tried, and even more rarely successful,'" 509 U. S., at 226, applies with equal force to predatory-bidding schemes. And like the predatory conduct in *Brooke Group*, actions taken in a predatory-bidding scheme are often "'"the very essence of competition,"'" *ibid.*, because a failed predatory-bidding scheme can be a "boon to consumers," see *id.*, at 224. Predatory bidding also presents less of a direct threat of consumer harm than predatory pricing, which achieves ultimate success by charging higher prices to consumers, because a predatory bidder does not necessarily rely on raising prices in the output market to recoup its losses. Pp. 321–325.

(d) Given these similarities, *Brooke Group*'s two-pronged test should apply to predatory-bidding claims. A predatory-bidding plaintiff must prove that the predator's bidding on the buy side caused the cost of the relevant output to rise above the revenues generated in the sale of those outputs. Because the risk of chilling procompetitive behavior with too lax a liability standard is as serious here as it was in *Brooke Group*, only higher bidding that leads to below-cost pricing in the relevant output market will suffice as a basis for predatory-bidding liability. A predatory-bidding plaintiff also must prove that the defendant has a dangerous probability of recouping the losses incurred in bidding up input prices through the exercise of monopsony power. Making such a showing will require "a close analysis of both the scheme alleged by the plaintiff and the [relevant market's] structure and conditions," 509 U. S., at 226. Pp. 325–326.

(e) Because Ross-Simmons has conceded that it has not satisfied the *Brooke Group* standard, its predatory-bidding theory of liability cannot support the jury's verdict. P. 326.

411 F. 3d 1030, vacated and remanded.

THOMAS, J., delivered the opinion for a unanimous Court.

Andrew J. Pincus argued the cause for petitioner. With him on the briefs were *Charles A. Rothfeld*, *Guy C. Stephenson*, *Stephen V. Bomse*, *M. Laurence Popofsky*, *Kevin J. Arquit*, and *Joseph F. Tringali*.

Kannon K. Shanmugam argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Barnett*, *Deputy Solicitor General Hungar*, *Deputy Assistant Attorney General Masoudi*, *Catherine G. O'Sullivan*, and *Adam D. Hirsh*.

Michael E. Haglund argued the cause for respondent. With him on the brief were *Michael K. Kelley* and *Roy Pulvers*.*

JUSTICE THOMAS delivered the opinion of the Court.

Respondent Ross-Simmons, a sawmill, sued petitioner Weyerhaeuser, alleging that Weyerhaeuser drove it out of

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*Briefs of *amici curiae* urging reversal were filed for AT&T Inc. et al. by *A. Douglas Melamed*, *Jonathan Nuechterlein*, *William M. Schur*, *Ronald A. Stern*, *John Thorne*, and *Paul J. Larkin, Jr.*; for the Business Roundtable et al. by *Janet L. McDavid*, *Catherine E. Stetson*, *Jessica L. Ellsworth*, *Jan S. Amundson*, and *Quentin Riegel*; for the Chamber of Commerce of the United States of America et al. by *Roy T. Englert, Jr.*, *Donald J. Russell*, *Mark T. Stancil*, *Stephen A. Bokat*, *Robin S. Conrad*, *Amar D. Sarwal*, and *Richard S. Wasserstrom*; for Economists by *Joe Sims* and *Beth Heifetz*; for Law Professors by *Joseph J. Simons* and *Moses Silverman*; and for Timberland Owners and Managers by *Jeffrey A. Lamken* and *Barnes H. Ellis*.

Briefs of *amici curiae* urging affirmance were filed for the State of California et al. by *Hardy Myers*, Attorney General of Oregon, and *Tim D. Nord*, Senior Assistant Attorney General, by *Bill Lockyer*, Attorney General of California, *Thomas Greene*, Chief Assistant Attorney General, *Kathleen E. Foote*, Senior Assistant Attorney General, and *Emilio E. Varanini IV*, Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Terry Goddard* of Arizona, *Thomas J. Miller* of Iowa, *Charles C. Foti, Jr.*, of Louisiana, *Mike McGrath* of Montana, *Darrell V. McGraw, Jr.*, of West Virginia, and *Peggy A. Lautenschlager* of Wisconsin; for the American Antitrust Institute by *Jonathan L. Rubin*, *Jonathan W. Cuneo*, and *Robert H. Lande*; and for Forest Industry Participants by *R. Daniel Lindahl*.

business by bidding up the price of sawlogs to a level that prevented Ross-Simmons from being profitable. A jury returned a verdict in favor of Ross-Simmons on its monopolization claim, and the Ninth Circuit affirmed. We granted certiorari to decide whether the test we applied to claims of predatory pricing in *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209 (1993), also applies to claims of predatory bidding. We hold that it does. Accordingly, we vacate the judgment of the Court of Appeals.

I

This antitrust case concerns the acquisition of red alder sawlogs by the mills that process those logs in the Pacific Northwest. These hardwood-lumber mills usually acquire logs in one of three ways. Some logs are purchased on the open bidding market. Some come to the mill through standing short- and long-term agreements with timberland owners. And others are harvested from timberland owned by the sawmills themselves. The allegations relevant to our decision in this case relate to the bidding market.

Ross-Simmons began operating a hardwood-lumber sawmill in Longview, Washington, in 1962. Weyerhaeuser entered the Northwestern hardwood-lumber market in 1980 by acquiring an existing lumber company. Weyerhaeuser gradually increased the scope of its hardwood-lumber operation, and it now owns six hardwood sawmills in the region. By 2001, Weyerhaeuser's mills were acquiring approximately 65 percent of the alder logs available for sale in the region. App. 754a, 341a.

From 1990 to 2000, Weyerhaeuser made more than $75 million in capital investments in its hardwood mills in the Pacific Northwest. *Id.*, at 159a. During this period, production increased at every Northwestern hardwood mill that Weyerhaeuser owned. *Id.*, at 160a. In addition to increasing production, Weyerhaeuser used "state-of-the-art technology," *id.*, at 500a, including sawing equipment, to increase the amount of lumber recovered from every log, *id.*, at 500a,

549a. By contrast, Ross-Simmons appears to have engaged in little efficiency-enhancing investment. See *id.*, at 438a–441a.

Logs represent up to 75 percent of a sawmill's total costs. See *id.*, at 169a. And from 1998 to 2001, the price of alder sawlogs increased while prices for finished hardwood lumber fell. These divergent trends in input and output prices cut into the mills' profit margins, and Ross-Simmons suffered heavy losses during this time. See *id.*, at 155a (showing a negative net income from 1998 to 2000). Saddled with several million dollars in debt, Ross-Simmons shut down its mill completely in May 2001. *Id.*, at 156a.

Ross-Simmons blamed Weyerhaeuser for driving it out of business by bidding up input costs, and it filed an antitrust suit against Weyerhaeuser for monopolization and attempted monopolization under §2 of the Sherman Act. See 26 Stat. 209, as amended, 15 U. S. C. §2 (2000 ed., Supp. IV). Ross-Simmons alleged that, among other anticompetitive acts, Weyerhaeuser had used "its dominant position in the alder sawlog market to drive up the prices for alder sawlogs to levels that severely reduced or eliminated the profit margins of Weyerhaeuser's alder sawmill competition." App. 135a. Proceeding in part on this "predatory-bidding" theory, Ross-Simmons argued that Weyerhaeuser had overpaid for alder sawlogs to cause sawlog prices to rise to artificially high levels as part of a plan to drive Ross-Simmons out of business. As proof that this practice had occurred, Ross-Simmons pointed to Weyerhaeuser's large share of the alder purchasing market, rising alder sawlog prices during the alleged predation period, and Weyerhaeuser's declining profits during that same period.

Prior to trial, Weyerhaeuser moved for summary judgment on Ross-Simmons' predatory-bidding theory. *Id.*, at 6a–24a. The District Court denied the motion. *Id.*, at 58a–69a. At the close of the 9-day trial, Weyerhaeuser moved for judgment as a matter of law, or alternatively, for a new

trial. The motions were based in part on Weyerhaeuser's argument that Ross-Simmons had not satisfied the standard this Court set forth in *Brooke Group*, *supra*. App. 940a–942a. The District Court denied Weyerhaeuser's motion. *Id.*, at 720a, App. to Pet. for Cert. 46a. The District Court also rejected proposed predatory-bidding jury instructions that incorporated elements of the *Brooke Group* test. App. 725a–730a, 978a. Ultimately, the District Court instructed the jury that Ross-Simmons could prove that Weyerhaeuser's bidding practices were anticompetitive acts if the jury concluded that Weyerhaeuser "purchased more logs than it needed, or paid a higher price for logs than necessary, in order to prevent [Ross-Simmons] from obtaining the logs they needed at a fair price." *Id.*, at 978a. Finding that Ross-Simmons had proved its claim for monopolization, the jury returned a $26 million verdict against Weyerhaeuser. *Id.*, at 967a. The verdict was trebled to approximately $79 million.

Weyerhaeuser appealed to the Court of Appeals for the Ninth Circuit. There, Weyerhaeuser argued that *Brooke Group*'s standard for claims of predatory pricing should also apply to claims of predatory bidding. The Ninth Circuit disagreed and affirmed the verdict against Weyerhaeuser. *Confederated Tribes of Siletz Indians of Ore.* v. *Weyerhaeuser Co.*, 411 F. 3d 1030, 1035–1036 (2005).

The Court of Appeals reasoned that "buy-side predatory bidding" and "sell-side predatory pricing," though similar, are materially different in that predatory bidding does not necessarily benefit consumers or stimulate competition in the way that predatory pricing does. *Id.*, at 1037. Concluding that "the concerns that led the *Brooke Group* Court to establish a high standard of liability in the predatory pricing context do not carry over to this predatory bidding context with the same force," the Court of Appeals declined to apply *Brooke Group* to Ross-Simmons' claims of predatory bidding. 411 F. 3d, at 1038. The Court of Appeals went on to con-

clude that substantial evidence supported a finding of liability on the predatory-bidding theory. *Id.*, at 1045. We granted certiorari to decide whether *Brooke Group* applies to claims of predatory bidding. 548 U. S. 903 (2006). We hold that it does, and we vacate the Court of Appeals' judgment.

II

In *Brooke Group*, we considered what a plaintiff must show in order to succeed on a claim of predatory pricing under §2 of the Sherman Act.[1] In a typical predatory-pricing scheme, the predator reduces the sale price of its product (its output) to below cost, hoping to drive competitors out of business. Then, with competition vanquished, the predator raises output prices to a supracompetitive level. See *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U. S. 574, 584–585, n. 8 (1986) (describing predatory pricing). For the scheme to make economic sense, the losses suffered from pricing goods below cost must be recouped (with interest) during the supracompetitive-pricing stage of the scheme. *Id.*, at 588–589; *Cargill, Inc.* v. *Monfort of Colo., Inc.*, 479 U. S. 104, 121–122, n. 17 (1986); see also R. Bork, The Antitrust Paradox 145 (1978). Recognizing this economic reality, we established two prerequisites to recovery on claims of predatory pricing. "First, a plaintiff seeking to establish competitive injury resulting from a rival's low prices must prove that the prices complained of are below an appropriate measure of its rival's costs." *Brooke Group*, 509 U. S., at 222. Second, a plaintiff must demonstrate that "the competitor had . . . a dangerous probabilit[y]

[1] *Brooke Group* dealt with a claim under the Robinson-Patman Act, but as we observed, "primary-line competitive injury under the Robinson-Patman Act is of the same general character as the injury inflicted by predatory pricing schemes actionable under §2 of the Sherman Act." 509 U. S., at 221. Because of this similarity, the standard adopted in *Brooke Group* applies to predatory-pricing claims under §2 of the Sherman Act. *Id.*, at 222.

of recouping its investment in below-cost prices." *Id.*, at 224.

The first prong of the test—requiring that prices be below cost—is necessary because "[a]s a general rule, the exclusionary effect of prices above a relevant measure of cost either reflects the lower cost structure of the alleged predator, and so represents competition on the merits, or is beyond the practical ability of a judicial tribunal to control." *Id.*, at 223. We were particularly wary of allowing recovery for above-cost price cutting because allowing such claims could, perversely, "chil[l] legitimate price cutting," which directly benefits consumers. See *id.*, at 223–224; *Atlantic Richfield Co.* v. *USA Petroleum Co.*, 495 U. S. 328, 340 (1990) ("Low prices benefit consumers regardless of how those prices are set, and so long as they are above predatory levels, they do not threaten competition"). Thus, we specifically declined to allow plaintiffs to recover for above-cost price cutting, concluding that "discouraging a price cut and . . . depriving consumers of the benefits of lower prices . . . does not constitute sound antitrust policy." *Brooke Group*, *supra*, at 224.

The second prong of the *Brooke Group* test—requiring that there be a dangerous probability of recoupment of losses—is necessary because, without a dangerous probability of recoupment, it is highly unlikely that a firm would engage in predatory pricing. As the Court explained in *Matsushita*, a firm engaged in a predatory-pricing scheme makes an investment—the losses suffered plus the profits that would have been realized absent the scheme—at the initial, below-cost-selling phase. 475 U. S., at 588–589. For that investment to be rational, a firm must reasonably expect to recoup in the long run at least its original investment with supracompetitive profits. *Ibid.*; *Brooke Group*, 509 U. S., at 224. Without such a reasonable expectation, a rational firm would not willingly suffer definite, short-run losses. Recognizing the centrality of recoupment to a predatory-pricing scheme, we required predatory-pricing plaintiffs to "demon-

strate that there is a likelihood that the predatory scheme alleged would cause a rise in prices above a competitive level that would be sufficient to compensate for the amounts expended on the predation, including the time value of the money invested in it." *Id.*, at 225.

We described the two parts of the *Brooke Group* test as "essential components of real market injury" that were "not easy to establish." *Id.*, at 226. We also reiterated that the costs of erroneous findings of predatory-pricing liability were quite high because "'[t]he mechanism by which a firm engages in predatory pricing—lowering prices—is the same mechanism by which a firm stimulates competition,'" and, therefore, mistaken findings of liability would "'"chill the very conduct the antitrust laws are designed to protect."'" *Ibid.* (quoting *Cargill*, *supra*, at 122, n. 17).

III

Predatory bidding, which Ross-Simmons alleges in this case, involves the exercise of market power on the buy side or input side of a market. In a predatory-bidding scheme, a purchaser of inputs "bids up the market price of a critical input to such high levels that rival buyers cannot survive (or compete as vigorously) and, as a result, the predating buyer acquires (or maintains or increases its) monopsony power." Kirkwood, Buyer Power and Exclusionary Conduct, 72 Antitrust L. J. 625, 652 (2005) (hereinafter Kirkwood). Monopsony power is market power on the buy side of the market. Blair & Harrison, Antitrust Policy and Monopsony, 76 Cornell L. Rev. 297 (1991). As such, a monopsony is to the buy side of the market what a monopoly is to the sell side and is sometimes colloquially called a "buyer's monopoly." See *id.*, at 301, 320; Piraino, A Proposed Antitrust Approach to Buyers' Competitive Conduct, 56 Hastings L. J. 1121, 1125 (2005).

A predatory bidder ultimately aims to exercise the monopsony power gained from bidding up input prices. To that end, once the predatory bidder has caused competing buyers

to exit the market for purchasing inputs, it will seek to "restrict its input purchases below the competitive level," thus "reduc[ing] the unit price for the remaining input[s] it purchases." Salop, Anticompetitive Overbuying by Power Buyers, 72 Antitrust L. J. 669, 672 (2005) (hereinafter Salop). The reduction in input prices will lead to "a significant cost saving that more than offsets the profit[s] that would have been earned on the output." *Ibid.* If all goes as planned, the predatory bidder will reap monopsonistic profits that will offset any losses suffered in bidding up input prices.[2] (In this case, the plaintiff was the defendant's competitor in the input-purchasing market. Thus, this case does not present a situation of suppliers suing a monopsonist buyer under § 2 of the Sherman Act, nor does it present a risk of significantly increased concentration in the market in which the monopsonist sells, *i. e.*, the market for finished lumber.)

IV

A

Predatory-pricing and predatory-bidding claims are analytically similar. See Hovenkamp, The Law of Exclusionary Pricing, 2 Competition Policy Int'l, No. 1, pp. 21, 35 (Spring 2006). This similarity results from the close theoretical connection between monopoly and monopsony. See Kirkwood 653 (describing monopsony as the "mirror image" of monopoly); *Khan* v. *State Oil Co.*, 93 F. 3d 1358, 1361 (CA7 1996) ("[M]onopsony pricing . . . is analytically the same as monopoly or cartel pricing and [is] so treated by the law"), vacated and remanded on other grounds, 522 U. S. 3 (1997); *Vogel* v.

[2] If the predatory firm's competitors in the input market and the output market are the same, then predatory bidding can also lead to the bidder's acquisition of monopoly power in the output market. In that case, which does not appear to be present here, the monopsonist could, under certain market conditions, also recoup its losses by raising output prices to monopolistic levels. See Salop 679–682 (describing a monopsonist's predatory strategy that depends upon raising prices in the output market).

American Soc. of Appraisers, 744 F. 2d 598, 601 (CA7 1984) ("[M]onopoly and monopsony are symmetrical distortions of competition from an economic standpoint"); see also Hearing on Monopsony Issues in Agriculture: Buying Power of Processors in Our Nation's Agricultural Markets before the Senate Committee on the Judiciary, 108th Cong., 1st Sess., 13 (2004). The kinship between monopoly and monopsony suggests that similar legal standards should apply to claims of monopolization and to claims of monopsonization. Cf. Noll, "Buyer Power" and Economic Policy, 72 Antitrust L. J. 589, 591 (2005) ("[A]symmetric treatment of monopoly and monopsony has no basis in economic analysis").

Tracking the economic similarity between monopoly and monopsony, predatory-pricing plaintiffs and predatory-bidding plaintiffs make strikingly similar allegations. A predatory-pricing plaintiff alleges that a predator cut prices to drive the plaintiff out of business and, thereby, to reap monopoly profits from the output market. In parallel fashion, a predatory-bidding plaintiff alleges that a predator raised prices for a key input to drive the plaintiff out of business and, thereby, to reap monopsony profits in the input market. Both claims involve the deliberate use of unilateral pricing measures for anticompetitive purposes.[3] And both claims logically require firms to incur short-term losses on the chance that they might reap supracompetitive profits in the future.

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[3] Predatory bidding on inputs is not analytically different from predatory overbuying of inputs. Both practices fall under the rubric of monopsony predation and involve an input purchaser's use of input prices in an attempt to exclude rival input purchasers. The economic effect of the practices is identical: Input prices rise. In a predatory-bidding scheme, the purchaser causes prices to rise by offering to pay more for inputs. In a predatory-overbuying scheme, the purchaser causes prices to rise by demanding more of the input. Either way, input prices increase. Our use of the term "predatory bidding" is not meant to suggest that different legal treatment is appropriate for the economically identical practice of "predatory overbuying."

B

More importantly, predatory bidding mirrors predatory pricing in respects that we deemed significant to our analysis in *Brooke Group*. In *Brooke Group*, we noted that "'predatory pricing schemes are rarely tried, and even more rarely successful.'" 509 U. S., at 226 (quoting *Matsushita*, 475 U. S., at 589). Predatory pricing requires a firm to suffer certain losses in the short term on the chance of reaping supracompetitive profits in the future. *Id.*, at 588–589. A rational business will rarely make this sacrifice. *Ibid.* The same reasoning applies to predatory bidding. A predatory-bidding scheme requires a buyer of inputs to suffer losses today on the chance that it will reap supracompetitive profits in the future. For this reason, "[s]uccessful monopsony predation is probably as unlikely as successful monopoly predation." R. Blair & J. Harrison, Monopsony 66 (1993).

And like the predatory conduct alleged in *Brooke Group*, actions taken in a predatory-bidding scheme are often "'"the very essence of competition."'" 509 U. S., at 226 (quoting *Cargill*, 479 U. S., at 122, n. 17, in turn quoting *Matsushita*, *supra*, at 594). Just as sellers use output prices to compete for purchasers, buyers use bid prices to compete for scarce inputs. There are myriad legitimate reasons—ranging from benign to affirmatively procompetitive—why a buyer might bid up input prices. A firm might bid up inputs as a result of miscalculation of its input needs or as a response to increased consumer demand for its outputs. A more efficient firm might bid up input prices to acquire more inputs as a part of a procompetitive strategy to gain market share in the output market. A firm that has adopted an input-intensive production process might bid up inputs to acquire the inputs necessary for its process. Or a firm might bid up input prices to acquire excess inputs as a hedge against the risk of future rises in input costs or future input shortages. See Salop 682–683; Kirkwood 655. There is nothing illicit about these bidding decisions. Indeed, this sort of high bidding is

essential to competition and innovation on the buy side of the market.[4]

Brooke Group also noted that a failed predatory-pricing scheme may benefit consumers. 509 U. S., at 224. The potential benefit results from the difficulty an aspiring predator faces in recouping losses suffered from below-cost pricing. Without successful recoupment, "predatory pricing produces lower aggregate prices in the market, and consumer welfare is enhanced." *Ibid.* Failed predatory-bidding schemes can also, but will not necessarily, benefit consumers. See Salop 677–678. In the first stage of a predatory-bidding scheme, the predator's high bidding will likely lead to its acquisition of more inputs. Usually, the acquisition of more inputs leads to the manufacture of more outputs. And increases in output generally result in lower prices to consumers.[5] *Id.*, at 677; Blair & Harrison, *supra*, at 66–67. Thus, a failed predatory-bidding scheme can be a "boon to consumers" in the same way that we considered a predatory-pricing scheme to be. See *Brooke Group*, *supra*, at 224.

In addition, predatory bidding presents less of a direct threat of consumer harm than predatory pricing. A predatory-pricing scheme ultimately achieves success by charging higher prices to consumers. By contrast, a predatory-bidding scheme could succeed with little or no effect on consumer prices because a predatory bidder does not necessarily rely on raising prices in the output market to recoup its losses. Salop 676. Even if output prices remain constant, a predatory bidder can use its power as the pre-

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[4] Higher prices for inputs obviously benefit existing sellers of inputs and encourage new firms to enter the market for input sales as well.

[5] Consumer benefit does not necessarily result at the first stage because the predator might not use its excess inputs to manufacture additional outputs. It might instead destroy the excess inputs. See Salop 677, n. 22. Also, if the same firms compete in the input and output markets, any increase in outputs by the predator could be offset by decreases in outputs from the predator's struggling competitors.

dominant buyer of inputs to force down input prices and capture monopsony profits. *Ibid.*

C

The general theoretical similarities of monopoly and monopsony combined with the theoretical and practical similarities of predatory pricing and predatory bidding convince us that our two-pronged *Brooke Group* test should apply to predatory-bidding claims.

The first prong of *Brooke Group*'s test requires little adaptation for the predatory-bidding context. A plaintiff must prove that the alleged predatory bidding led to below-cost pricing of the predator's outputs. That is, the predator's bidding on the buy side must have caused the cost of the relevant output to rise above the revenues generated in the sale of those outputs. As with predatory pricing, the exclusionary effect of higher bidding that does not result in below-cost output pricing "is beyond the practical ability of a judicial tribunal to control without courting intolerable risks of chilling legitimate" procompetitive conduct. 509 U. S., at 223. Given the multitude of procompetitive ends served by higher bidding for inputs, the risk of chilling procompetitive behavior with too lax a liability standard is as serious here as it was in *Brooke Group*. Consequently, only higher bidding that leads to below-cost pricing in the relevant output market will suffice as a basis for liability for predatory bidding.

A predatory-bidding plaintiff also must prove that the defendant has a dangerous probability of recouping the losses incurred in bidding up input prices through the exercise of monopsony power. Absent proof of likely recoupment, a strategy of predatory bidding makes no economic sense because it would involve short-term losses with no likelihood of offsetting long-term gains. Cf. *id.*, at 224 (citing *Matsushita*, *supra*, at 588–589). As with predatory pricing, making a showing on the recoupment prong will require

"a close analysis of both the scheme alleged by the plaintiff and the structure and conditions of the relevant market." *Brooke Group*, *supra*, at 226.

Ross-Simmons has conceded that it has not satisfied the *Brooke Group* standard. Brief for Respondent 49; Tr. of Oral Arg. 49. Therefore, its predatory-bidding theory of liability cannot support the jury's verdict.

V

For these reasons, we vacate the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

LAWRENCE *v.* FLORIDA

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 05–8820. Argued October 31, 2006—Decided February 20, 2007

The 1-year statute of limitations for seeking federal habeas relief from a state-court judgment is tolled while an "application for State post-conviction or other collateral review" "is pending." 28 U. S. C. §2244(d)(2). Petitioner Lawrence filed a state postconviction relief application 364 days after his conviction became final. The trial court denied relief, the State Supreme Court affirmed, and this Court denied certiorari. While the certiorari petition was pending, Lawrence filed the present federal habeas application. Then-applicable Eleventh Circuit precedent foreclosed any argument that the limitations period was tolled by the pendency of the certiorari petition. Thus, the District Court dismissed Lawrence's application as untimely because he waited 113 days after the State Supreme Court's mandate—well beyond the one day that remained in the limitations period—to file the application. The Eleventh Circuit affirmed.

Held:

1. Section 2244(d)(2) does not toll the 1-year limitations period during the pendency of a certiorari petition in this Court. Pp. 331–336.

(a) Read naturally, the statute's text means that the statute of limitations is tolled only while state courts review the application. A state postconviction application "remains pending" "until the application has achieved final resolution through the State's postconviction procedures." *Carey* v. *Saffold*, 536 U. S. 214, 220. This Court is not a part of those "procedures," which end when the state courts have finally resolved the application. The application is therefore not "pending" after the state court's postconviction review is complete. If it were, it is difficult to understand how a state prisoner could exhaust state postconviction remedies without filing a certiorari petition. Yet state prisoners need not petition for certiorari to exhaust state remedies. *Fay* v. *Noia*, 372 U. S. 391, 435–438. Pp. 331–333.

(b) Lawrence argues that §2244(d)(2) should be construed to have the same meaning as §2244(d)(1)(A), which refers to "the date on which the judgment became final by *the conclusion of direct review* or the expiration of the time for seeking such review." (Emphasis added.) While "direct review" has long included review by this Court, *Clay* v. *United States*, 537 U. S. 522, 527–528, §2244(d)(2) refers exclusively to "State post-conviction or other collateral review," language not easily

Syllabus

interpreted to include participation by a federal court. And although the "time for seeking" direct review includes the period for filing a certiorari petition, §2244(d)(2) makes no reference to the "time for seeking" review of a state postconviction court's judgment. Instead, it seeks to know when a state review application is pending. A more analogous statutory provision, §2263(b)(2), contains a limitations period that is tolled "from the date on which the first petition for postconviction review or other collateral relief is filed until the final State court disposition of such petition." Although this differs from §2244(d)(2)'s language, the language used in both sections clearly provides that tolling hinges on the pendency of state review. This interpretation of §2244(d)(2) results in few practical problems. Because this Court rarely grants review of state postconviction proceedings, it is unlikely that a federal district court would duplicate this Court's work or analysis. In any event, a district court concerned about duplication can stay a habeas application until this Court acts. Even in the extremely rare case in which a state court grants relief and the State prevails on certiorari, a prisoner who files a subsequent federal habeas petition may be entitled to equitable tolling in light of arguably extraordinary circumstances and the prisoner's diligence. See *Pace* v. *DiGuglielmo*, 544 U. S. 408, 418, and n. 8. In contrast to these hypothetical problems, allowing the statute of limitations to be tolled by certiorari petitions would provide incentives for state prisoners to file such petitions as a delay tactic, regardless of the merit of their claims. Pp. 333–336.

2. Assuming, without deciding, that §2244(d)(2) allows for equitable tolling, Lawrence falls far short of showing "extraordinary circumstances," *Pace*, *supra*, at 418, necessary to support equitable tolling of his otherwise untimely claims. Pp. 336–337.

421 F. 3d 1221, affirmed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, and ALITO, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which STEVENS, SOUTER, and BREYER, JJ., joined, *post*, p. 337.

Mary Catherine Bonner, by appointment of the Court, 547 U. S. 1146, argued the cause for petitioner. With her on the briefs were *Wanda Raiford*, *Jeffrey T. Green*, *William M. Norris*, and *Diane E. Courselle*.

Christopher M. Kise argued the cause for respondent. With him on the brief were *Charles J. Crist, Jr.*, Attorney

General of Florida, and *James A. McKee*, Deputy Solicitor General.*

JUSTICE THOMAS delivered the opinion of the Court.

Congress established a 1-year statute of limitations for seeking federal habeas corpus relief from a state-court judgment, 28 U. S. C. §2244(d), and further provided that the limitations period is tolled while an "application for State post-conviction or other collateral review" "is pending," §2244(d)(2). We must decide whether a state application is still "pending" when the state courts have entered a final judgment on the matter but a petition for certiorari has been filed in this Court. We hold that it is not.

I

Petitioner Gary Lawrence and his wife used a pipe and baseball bat to kill Michael Finken. A Florida jury con-

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *John Holdridge*, *Steven R. Shapiro*, and *Larry W. Yackle*; and for the National Association of Criminal Defense Lawyers by *Matthew M. Shors* and *Pamela Harris*.

A brief of *amici curiae* urging affirmance was filed for the State of Alabama et al. by *Troy King*, Attorney General of Alabama, *Kevin C. Newsom*, Solicitor General, and *James R. Houts*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Mike Beebe* of Arkansas, *Bill Lockyer* of California, *John W. Suthers* of Colorado, *Carl C. Danberg* of Delaware, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Steve Carter* of Indiana, *Tom Miller* of Iowa, *Phill Kline* of Kansas, *Gregory D. Stumbo* of Kentucky, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Jon Bruning* of Nebraska, *George J. Chanos* of Nevada, *Kelly A. Ayotte* of New Hampshire, *Wayne Stenehjem* of North Dakota, *Jim Petro* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Henry D. McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Paul G. Summers* of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Robert F. McDonnell* of Virginia, *Rob McKenna* of Washington, and *Darrell V. McGraw, Jr.*, of West Virginia.

victed Lawrence of first-degree murder, conspiracy to commit murder, auto theft, and petty theft. The trial court sentenced Lawrence to death. The Florida Supreme Court affirmed Lawrence's conviction and sentence on appeal, and this Court denied certiorari on January 20, 1998. 522 U. S. 1080.

On January 19, 1999, 364 days later, Lawrence filed an application for state postconviction relief in a Florida trial court.[1] The court denied relief, and the Florida Supreme Court affirmed, issuing its mandate on November 18, 2002. See *Lawrence* v. *State*, 831 So. 2d 121 *(per curiam)*. Lawrence sought review of the denial of state postconviction relief in this Court. We denied certiorari on March 24, 2003. 538 U. S. 926.

While Lawrence's petition for certiorari was pending, he filed the present federal habeas application. The Federal District Court dismissed it as untimely under §2244(d)'s 1-year limitations period. All but one day of the limitations period had lapsed during the 364 days between the time Lawrence's conviction became final and when he filed for state postconviction relief. The limitations period was then tolled while the Florida courts entertained his state application. After the Florida Supreme Court issued its mandate, Lawrence waited another 113 days—well beyond the 1 day that remained in the limitations period—to file his federal habeas application. As a consequence, his federal application could be considered timely only if the limitations period

[1] Lawrence contends that delays in Florida's program for appointing postconviction counsel and other issues outside of his control caused 298 days to pass before Florida appointed an attorney who took an active role in his postconviction case. These facts have little relevance to our analysis. Lawrence did not seek certiorari on the question whether these facts entitle him to equitable tolling. Indeed, Lawrence was able to file his state postconviction petition on time in spite of these delays. And before this Court, he argues that his attorney mistakenly missed the federal habeas deadline, not that he lacked adequate time to file a federal habeas application.

continued to be tolled during this Court's consideration of his petition for certiorari. Then-applicable Eleventh Circuit precedent foreclosed any argument that § 2244's statute of limitations was tolled by the pendency of a petition for certiorari seeking review of a state postconviction proceeding. See *Coates* v. *Byrd*, 211 F. 3d 1225, 1227 (2000) *(per curiam)*. Accordingly, the District Court concluded that Lawrence had only one day to file a federal habeas application after the Florida Supreme Court issued its mandate. The Eleventh Circuit affirmed. 421 F. 3d 1221 (2005). We granted certiorari, 547 U. S. 1039 (2006), and now affirm.

II

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214, sets a 1-year statute of limitations for seeking federal habeas corpus relief from a state-court judgment. 28 U. S. C. § 2244(d)(1). This limitations period is tolled while a state prisoner seeks postconviction relief in state court:

> "The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." § 2244(d)(2).

Based on this provision, the parties agree that AEDPA's limitations period was tolled from the filing of Lawrence's petition for state postconviction relief until the Florida Supreme Court issued its mandate affirming the denial of that petition. At issue here is whether the limitations period was also tolled during the pendency of Lawrence's petition for certiorari to this Court seeking review of the denial of state postconviction relief. If it was tolled, Lawrence's federal habeas application was timely. So we must decide whether, according to § 2244(d)(2), an "application for State post-

conviction or other collateral review" "is pending" while this Court considers a certiorari petition.[2]

Read naturally, the text of the statute must mean that the statute of limitations is tolled only while state courts review the application. As we stated in *Carey* v. *Saffold*, 536 U. S. 214, 220 (2002) (internal quotation marks omitted), a state postconviction application "remains pending" "until the application has achieved final resolution through the State's postconviction procedures." This Court is not a part of a "State's post-conviction procedures." State review ends when the state courts have finally resolved an application for state postconviction relief. After the State's highest court has issued its mandate or denied review, no other state avenues for relief remain open. And an application for state postconviction review no longer exists. All that remains is a separate certiorari petition pending before a *federal* court. The application for state postconviction review is therefore not "pending" after the state court's postconviction review is complete, and § 2244(d)(2) does not toll the 1-year limitations period during the pendency of a petition for certiorari.

If an application for state postconviction review were "pending" during the pendency of a certiorari petition in this Court, it is difficult to understand how a state prisoner could exhaust state postconviction remedies without filing a petition for certiorari. Indeed, AEDPA's exhaustion provision and tolling provision work together:

> "The tolling provision of § 2244(d)(2) balances the interests served by the exhaustion requirement and the limitation period. . . .
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> . . . . .

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[2] We have previously held that the word "State" modifies both the terms "post-conviction" and "other collateral review." *Duncan* v. *Walker*, 533 U. S. 167, 172–174 (2001). The question, therefore, is whether "an application for *State* post-conviction or other *[State]* collateral review . . . is pending." § 2244(d)(2) (emphasis added).

> Section 2244(d)(1)'s limitation period and § 2244(d)(2)'s tolling provision, together with § 2254(b)'s exhaustion requirement, encourage litigants *first* to exhaust all state remedies and *then* to file their federal habeas petitions *as soon as possible*." *Duncan* v. *Walker*, 533 U. S. 167, 179, 181 (2001) (final emphasis added).

Yet we have said that state prisoners need not petition for certiorari to exhaust state remedies. *Fay* v. *Noia*, 372 U. S. 391, 435–438 (1963); *County Court of Ulster Cty.* v. *Allen*, 442 U. S. 140, 149–150, n. 7 (1979). State remedies are exhausted at the end of state-court review. *Fay*, *supra*, at 435–438; *Allen*, *supra*, at 149–150, n. 7.

Lawrence argues that § 2244(d)(2) should be construed to have the same meaning as § 2244(d)(1)(A), the trigger provision that determines when AEDPA's statute of limitations begins to run. But § 2244(d)(1)(A) uses much different language from § 2244(d)(2), referring to "the date on which the judgment became final by *the conclusion of direct review* or the expiration of the time for seeking such review." § 2244(d)(1)(A) (emphasis added). When interpreting similar language in § 2255, we explained that "direct review" has long included review by this Court. *Clay* v. *United States*, 537 U. S. 522, 527–528 (2003). Indeed, we noted that "[t]he Courts of Appeals have uniformly interpreted 'direct review' in § 2244(d)(1)(A) to encompass review of a state conviction by this Court." *Id.*, at 528, n. 3 (collecting cases). By contrast, § 2244(d)(2) refers exclusively to "*State* post-conviction or other collateral review," language not easily interpreted to include participation by a federal court.

Furthermore, § 2244(d)(1)(A) refers to the "time for seeking" direct review, which includes review by this Court under *Clay*. By parity of reasoning, the "time for seeking" review of a state postconviction judgment arguably would include the period for filing a certiorari petition before this Court. However, § 2244(d)(2) makes no reference to the

"time for seeking" review of a state postconviction court's judgment. Instead, it seeks to know when an application for "State . . . review" is pending. The linguistic difference is not insignificant: When the state courts have issued a final judgment on a state application, it is no longer pending even if a prisoner has additional time for seeking review of that judgment through a petition for certiorari.

A more analogous statutory provision is § 2263(b)(2), which is part of AEDPA's "opt-in" provisions for States that comply with specific requirements relating to the provision of postconviction counsel. Under § 2263, the limitations period is tolled "from the date on which the first petition for postconviction review or other collateral relief is filed until the final State court disposition of such petition." § 2263(b)(2). Lawrence concedes that under this language there would be no tolling for certiorari petitions seeking review of state postconviction applications. And although he correctly notes that the language in § 2263 differs from the language of § 2244(d)(2), it is clear that the language used in both sections provides that tolling hinges on the pendency of state review. See § 2263(b)(2) ("until the final State court disposition of such petition"); § 2244(d)(2) ("a properly filed application for State post-conviction or other collateral review . . . is pending"). Given Congress' clear intent in § 2263 to provide tolling for certiorari petitions on direct review but not for certiorari petitions following state postconviction review, it is not surprising that Congress would make the same distinction in § 2244.

Lawrence also argues that our interpretation would result in awkward situations in which state prisoners have to file federal habeas applications while they have certiorari petitions from state postconviction proceedings pending before this Court. But these situations will also arise under the express terms of § 2263, and Lawrence admits that Congress intended that provision to preclude tolling for certiorari petitions. Brief for Petitioner 22. Because Congress was not

concerned by this potential for awkwardness in § 2263, there is no reason for us to construe the statute to avoid it in § 2244(d)(2).

Contrary to Lawrence's suggestion, our interpretation of § 2244(d)(2) results in few practical problems. As JUSTICE STEVENS has noted, "this Court rarely grants review at this stage of the litigation even when the application for state collateral relief is supported by arguably meritorious federal constitutional claims," choosing instead to wait for "federal habeas proceedings." *Kyles* v. *Whitley*, 498 U. S. 931, 932 (1990) (opinion concurring in denial of stay of execution). Thus, the likelihood that the District Court will duplicate work or analysis that might be done by this Court if we granted certiorari to review the state postconviction proceeding is quite small. And in any event, a district court concerned about duplicative work can stay the habeas application until this Court resolves the case or, more likely, denies the petition for certiorari.

Lawrence argues that even greater anomalies result from our interpretation when the state court grants relief to a prisoner and the state petitions for certiorari. In that hypothetical, Lawrence maintains that the prisoner would arguably lack standing to file a federal habeas application immediately after the state court's judgment (because the state court granted him relief) but would later be time barred from filing a federal habeas application if we granted certiorari and the State prevailed. Again, this particular procedural posture is extremely rare. Even so, equitable tolling may be available, in light of the arguably extraordinary circumstances and the prisoner's diligence. See *Pace* v. *DiGuglielmo*, 544 U. S. 408, 418, and n. 8 (2005).[3] We cannot base our interpretation of the statute on an exceedingly rare inequity that Congress almost certainly was not contemplating and that may well be cured by equitable tolling.

[3] As discussed below, we assume, as the parties do, the availability of equitable tolling under § 2244.

In contrast to the hypothetical problems identified by Lawrence, allowing the statute of limitations to be tolled by certiorari petitions would provide incentives for state prisoners to file certiorari petitions as a delay tactic. By filing a petition for certiorari, the prisoner would push back § 2244's deadline while we resolved the petition for certiorari. This tolling rule would provide an incentive for prisoners to file certiorari petitions—regardless of the merit of the claims asserted—so that they receive additional time to file their habeas applications.

III

Lawrence also argues that equitable tolling applies to his otherwise untimely claims. We have not decided whether § 2244(d) allows for equitable tolling. See *ibid.* Because the parties agree that equitable tolling is available, we assume without deciding that it is. To be entitled to equitable tolling, Lawrence must show "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way" and prevented timely filing. *Id.*, at 418.

Lawrence makes several arguments in support of his contention that equitable tolling applies to his case. First, he argues that legal confusion about whether AEDPA's limitations period is tolled by certiorari petitions justifies equitable tolling. But at the time the limitations period expired in Lawrence's case, the Eleventh Circuit and every other Circuit to address the issue agreed that the limitations period was not tolled by certiorari petitions. See, *e. g.*, *Coates*, 211 F. 3d, at 1227. The settled state of the law at the relevant time belies any claim to legal confusion.

Second, Lawrence argues that his counsel's mistake in miscalculating the limitations period entitles him to equitable tolling. If credited, this argument would essentially equitably toll limitations periods for every person whose attorney missed a deadline. Attorney miscalculation is simply not sufficient to warrant equitable tolling, particularly in the

postconviction context where prisoners have no constitutional right to counsel. *E. g.*, *Coleman* v. *Thompson*, 501 U. S. 722, 756–757 (1991).

Third, Lawrence argues that his case presents special circumstances because the state courts appointed and supervised his counsel. But a State's effort to assist prisoners in postconviction proceedings does not make the State accountable for a prisoner's delay. Lawrence has not alleged that the State prevented him from hiring his own attorney or from representing himself. It would be perverse indeed if providing prisoners with postconviction counsel deprived States of the benefit of the AEDPA statute of limitations. See, *e. g.*, *Duncan*, 533 U. S., at 179 ("The 1-year limitation period of § 2244(d)(1) quite plainly serves the well-recognized interest in the finality of state court judgments").

Fourth, Lawrence argues that his mental incapacity justifies his reliance upon counsel and entitles him to equitable tolling. Even assuming this argument could be legally credited, Lawrence has made no factual showing of mental incapacity. In sum, Lawrence has fallen far short of showing "extraordinary circumstances" necessary to support equitable tolling.

IV

The Court of Appeals correctly determined that the filing of a petition for certiorari before this Court does not toll the statute of limitations under § 2244(d)(2). It also correctly declined to equitably toll the limitations period in the factual circumstances of Lawrence's case. For these reasons, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

The Court today concludes that an application for state postconviction review "no longer exists"—and therefore is

not "pending"—once it has been decided by a State's highest court. *Ante*, at 332. What remains, the majority reasons, is a "separate" certiorari proceeding pending before this Court. *Ibid.* But petitions for certiorari do not exist in a vacuum; they arise from actions instituted in lower courts. When we are asked to review a state court's denial of habeas relief, we consider an application for that relief—not an application for federal habeas relief. Until we have disposed of the petition for certiorari, the application remains live as one for state postconviction relief; it is not transformed into a federal application simply because the state-court applicant petitions for this Court's review.[1]

I would therefore hold that 28 U. S. C. §2244(d)'s statute of limitations is tolled during the pendency of a petition for certiorari.[2] Congress instructed that the one-year limitation period for filing a habeas petition in the appropriate federal district court does not include "[t]he time during which a properly filed application for State post-conviction or other collateral review . . . is pending." §2244(d)(2). That provision can and should be read to continue statutory tolling until this Court has either decided or denied a petition for certiorari addressed to the state court's disposition of an application for postconviction relief. See *Carey* v. *Saffold*, 536 U. S. 214, 219–220 (2002) ("pending" means "in continu-

[1] It is unclear just what the majority thinks we are considering when we address a state habeas petition on certiorari. We are certainly not deciding a petition for federal habeas relief. See 28 U. S. C. §2254 (authorizing applications by persons in state custody for federal habeas review). And though we can entertain original habeas petitions, see *Felker* v. *Turpin*, 518 U. S. 651, 660 (1996), a petition for certiorari from a state-court judgment does not fall within that category.

[2] I would not reach in this proceeding cases in which a petitioner does not seek certiorari review of the state court's judgment—*i. e.*, cases presenting the question whether tolling ends with the decision of the State's highest court or with the expiration of the time to file a petition for certiorari. That question is not presented here, for Lawrence timely sought this Court's review of the denial of state postconviction relief.

ance" or "not yet decided" (internal quotation marks omitted)). The majority's contrary reading of § 2244(d)(2) cuts short the tolling period before this Court has had an opportunity to consider an application for state postconviction relief. That reading, I conclude, is neither a necessary nor a proper interpretation of the statute.

I

Two other provisions in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1217, 1223—§§ 2244(d)(1) and 2263(b)(2)—bear on the proper interpretation of § 2244(d)(2). The first of these, § 2244(d)(1)(A), tells us when AEDPA's statute of limitations begins to run; it states that the trigger is "the date on which the judgment [of conviction] became final by the conclusion of direct review or the expiration of the time for seeking such review." Congress thus explicitly ordered that the clock starts, following a state conviction, when the time to file a petition for certiorari expires or, if a petition is filed, when it is decided or denied. See *Clay* v. *United States*, 537 U. S. 522, 527–529, and n. 3 (2003).

According to the majority, § 2244(d)(2) cannot be interpreted similarly to encompass this Court's review because the text of that provision "refers exclusively to '*State* post-conviction or other collateral review.'" *Ante*, at 333 (emphasis in original). In fact, § 2244(d)(2) refers to an "*application* for State post-conviction or other collateral review." (Emphasis added.) And it tolls the limitation period while the application is "pending," not while it is "pending *in State court*." See § 2244(d)(2). Just as a judgment of conviction is not "final" until we have declined review or decided the case on the merits, see *Clay*, 537 U. S., at 527–530 (interpreting § 2255), so an application for state habeas relief is sensibly understood to remain "pending" until we have disposed of the case. It is a fundamental characteristic of our federal system that this Court has appellate jurisdiction over state-

court decisions implicating federal law or the Constitution. Until we have exercised that jurisdiction or declined to do so the case is not finally decided. See *supra*, at 338, and n. 1.[3]

In support of its opposing view, the majority emphasizes that § 2244(d)(2) does not include the words "time for seeking . . . review," words included in § 2244(d)(1)(A). This difference in phrasing, the majority reasons, indicates that Congress intended to cut off tolling as soon as the highest state court renders its judgment, well before a petition for review is filed in this Court.[4] But the wording of § 2244(d)(2), I am persuaded, is more appropriately contrasted with § 2263(b)(2), which prescribes a parallel tolling rule for "opt-in" capital cases. Section 2263(b)(2), unlike the provision at issue here, leaves no doubt that Congress intended to exclude from the tolling period the time for filing a petition for certiorari. It provides that the statute of limitations tolls "from the date on which the first petition for post-conviction review or other collateral relief is filed *until the final State court disposition of such petition.*" (Emphasis added.) Section 2263(b)(2) thus demonstrates that when Congress wanted to cut off tolling immediately upon the final

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[3] The majority inappropriately relies on *Carey* v. *Saffold*, 536 U. S. 214, 220 (2002), for the proposition that a state postconviction application remains pending only until the State's postconviction procedures are complete. *Ante*, at 332. Though *Carey* affirmed that tolling continues throughout the State's own postconviction procedures, it did not hold that (or even consider whether) the time for seeking certiorari from this Court was excluded from the tolling period.

[4] Notably, in *Clay* v. *United States*, 537 U. S. 522, 527–530 (2003), we rejected the contention that the absence of the phrase "time for seeking . . . review" from another provision changed the meaning of "final." Section 2255, ¶6(1), refers simply to "the date on which the judgment of conviction becomes final" and not to "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." Nevertheless, we held that a judgment of conviction becomes final when the time expires for filing a petition for certiorari. *Id.*, at 525, 528.

state-court decision—*i. e.*, to exclude this Court's review from the tolling period—it simply said so.

One can understand why Congress might have chosen an uncommon rule for the special capital cases covered by §§2261–2263, a separate chapter of the statute. By terminating tolling upon final state-court disposition, rather than extending the period during the pendency of a certiorari petition, Congress eliminated one source of delay in implementing the death penalty. But Congress provided that the shortened tolling period would apply only to petitions brought by prisoners in States that have established a mechanism for providing counsel in postconviction proceedings. See §2261. An attorney, of course, is better equipped than a *pro se* petitioner to clear procedural hurdles, including shortened timelines.[5] Given the exceptional character of the opt-in category, §2244(d)(2) is more appropriately aligned with §2244(d)(1)(A), the provision immediately preceding it, than with §2263(b)(2).

The majority maintains that if an application for state postconviction review were considered to be "pending" while a certiorari petition remained before this Court, then a state prisoner could not exhaust state postconviction remedies without filing a petition for certiorari. *Ante*, at 332–333. But exhaustion and tolling serve discrete functions and need not be synchronized. The former is a prerequisite to filing for habeas relief in federal court. Exhaustion promotes principles of comity and federalism by giving state courts the first opportunity to adjudicate claims of state prisoners; that doctrine, however, does not necessitate this Court's review of the state court's determination. See *O'Sullivan* v. *Boerckel*, 526 U. S. 838, 844 (1999) ("Comity . . . dictates that when a prisoner alleges that his continued confinement for a

[5] Matching §2263(b)(2)'s abbreviated tolling period, §2263(a) provides for a shorter statute of limitations. Compare §2244(d)(1) ("A 1-year period of limitation shall apply to an application for a writ of habeas corpus . . . .") with §2263(a) (establishing a 180-day period of limitation).

state court conviction violates federal law, the state courts should have the first opportunity to review this claim and provide any necessary relief."). Tolling, in contrast, concerns the time within which a procedural move must be made, not the issues that must be raised before a particular tribunal. And while one purpose of tolling is to allow adequate time for exhaustion, that is not the sole objective. Tolling in the context here involved also protects a litigant's ability to pursue his or her federal claims in a federal forum and avoids simultaneous litigation in more than one court—objectives undercut by today's decision. See *infra* this page and 343–345.

Duncan v. *Walker*, 533 U. S. 167 (2001), does not suggest a different result. Cf. *ante*, at 332–333. In *Duncan*, we held that a *federal* habeas petition does not toll § 2244(d)(1)'s limitation period because "an application for federal habeas corpus review is not an application for State post-conviction or other collateral review within the meaning of 28 U. S. C. § 2244(d)(2)." 533 U. S., at 181 (internal quotation marks omitted). But, unlike a federal habeas petition, an application for *state* habeas review undoubtedly is "an application for State post-conviction review." This is so whether the application is under review in a state appellate court or is the subject of a petition seeking certiorari from this Court.

II

Not only is the majority's reading of § 2244(d)(2) unwarranted, it will also spark the simultaneous filing of two pleadings seeking essentially the same relief. A petitioner denied relief by a State's highest court will now have to file, contemporaneously, a petition for certiorari in this Court and a habeas petition in federal district court. Only by expeditiously filing for federal habeas relief will a prisoner ensure that the limitation period does not run before we have disposed of his or her petition for certiorari. Protective petitions will be essential, too, when we grant review of a state

court's ruling on a state habeas petition, for many months can elapse between the date we agree to hear a case and the date we issue an opinion.[6] Consequently, the same claims will be pending in two courts at once, and the duplication will occasion administrative problems; for example, no decision, law, or rule tells us in which court the record in the case should be lodged. See this Court's Rule 12, ¶ 7 ("The clerk of the court having possession of the record shall keep it until notified by the Clerk of this Court to certify and transmit it."). There is no indication that Congress intended to burden the court system or litigants with such premature filings.[7]

The anticipatory filing in a federal district court will be all the more anomalous when a habeas petitioner prevails in state court and the State petitions for certiorari. Under the

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[6] See, *e. g.*, *Sanchez-Llamas* v. *Oregon*, 548 U. S. 331 (2006) (certiorari petition filed on June 7, 2005, and decided 386 days later on June 28, 2006); *Deck* v. *Missouri*, 544 U. S. 622 (2005) (certiorari petition filed on July 15, 2004, and decided 312 days later on May 23, 2005).

[7] The majority regards the practical problems as inconsequential for we rarely grant certiorari in state habeas proceedings. *Ante*, at 335. For this proposition, the Court cites a pre-AEDPA case in which JUSTICE STEVENS noted that federal habeas proceedings were generally the more appropriate avenue for our consideration of federal constitutional claims. See *Kyles* v. *Whitley*, 498 U. S. 931, 932 (1990) (opinion concurring in denial of stay of execution). Since AEDPA, however, our consideration of state habeas petitions has become more pressing. Under AEDPA's standard of review, a petitioner who has suffered a violation of a constitutional right will nonetheless fail on federal habeas unless the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by [this] Court," § 2254(d)(1), or "was based on an unreasonable determination of the facts," § 2254(d)(2). Even if rare, the importance of our review of state habeas proceedings is evident. See, *e. g.*, *Deck*, 544 U. S., at 624 (granting review of state habeas petition and holding that the Constitution forbids the use of visible shackles during guilt and penalty phase unless justified by an essential state interest); *Roper* v. *Simmons*, 543 U. S. 551, 578 (2005) (granting review of state habeas petition and holding that execution of individuals under age of 18 is prohibited by the Eighth and Fourteenth Amendments).

majority's decision, it appears, the petitioner will be obliged to file a protective petition in federal court even though he gained relief from the state tribunal. Lawrence questions whether the federal courts would even have jurisdiction over such a bizarre petition. See *ante*, at 335. While I incline to the view that a prisoner in such a position would have standing, Lawrence's concerns are at least plausible and raise the specter of a habeas petitioner prevailing in state court, yet losing the right to pursue constitutional claims in federal court altogether: By the time we have ruled on the State's petition, the statute of limitations likely would have run.

Though recognizing this problem, the majority suggests that equitable tolling may provide a solution. But in the next breath, the majority hastens to clarify that the Court does *not* hold that equitable tolling is available under AEDPA. *Ante*, at 335, and n. 3.[8]

By contrast, no similar problems, practical or jurisdictional, would result from a determination that an application for state postconviction review remains "pending" while a petition for certiorari from the state court's decision is before this Court. Nor would such a determination create an untoward opportunity for abuse of the writ. The majority's suggestion that prisoners would have an incentive to petition for certiorari as a delay tactic has no basis in reality in the mine run of cases. Most prisoners want to be released from custody as soon as possible, not to prolong their incarceration. They are therefore interested in the expeditious resolution of their claims.[9]

As earlier indicated, see *supra*, at 342–343 and this page, under the majority's rule, a petitioner could achieve the

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[8] Satisfied that statutory tolling covers this case, I do not address petitioner's alternative argument for equitable tolling.

[9] Though capital petitioners may be aided by delay, they are a small minority of all petitioners. In this case, moreover, there is no indication that Lawrence was intentionally dilatory. See *ante*, at 330, n. 1.

equivalent of tolling by filing a protective petition in federal court and seeking a stay while a certiorari petition is pending. See *ante*, at 335; cf. *Rhines* v. *Weber*, 544 U. S. 269, 278–279 (2005) (a prisoner seeking state postconviction relief may file a protective petition in federal court and ask the court to stay and abey the federal proceedings until state remedies are exhausted). In that event, today's decision does nothing to promote the finality of state-court determinations or the expeditious resolution of claims. Rather, it imposes an unnecessary administrative burden on federal district judges who must determine whether to grant a requested stay, and it sets a trap for those *pro se* litigants unaware of the need to file duplicative petitions.

In sum, the majority's reading is neither compelled by the text of § 2244(d)(2) nor practically sound. By cutting off tolling before this Court has had an opportunity to consider a pending petition for certiorari, the Court's holding will unnecessarily encumber the federal courts with anticipatory filings and deprive unwitting litigants of the opportunity to pursue their constitutional claims—all without furthering the purposes of AEDPA.

* * *

For the reasons stated, I would hold that petitioner Lawrence qualifies for statutory tolling under § 2244(d)(2), and would therefore reverse the Eleventh Circuit's judgment.

Syllabus

PHILIP MORRIS USA *v.* WILLIAMS, PERSONAL REPRESENTATIVE OF ESTATE OF WILLIAMS, DECEASED

CERTIORARI TO THE SUPREME COURT OF OREGON

No. 05–1256. Argued October 31, 2006—Decided February 20, 2007

In this state negligence and deceit lawsuit, a jury found that Jesse Williams' death was caused by smoking and that petitioner Philip Morris, which manufactured the cigarettes he favored, knowingly and falsely led him to believe that smoking was safe. In respect to deceit, it awarded $821,000 in compensatory damages and $79.5 million in punitive damages to respondent, the personal representative of Williams' estate. The trial court reduced the latter award, but it was restored by the Oregon Court of Appeals. The State Supreme Court rejected Philip Morris' arguments that the trial court should have instructed the jury that it could not punish Philip Morris for injury to persons not before the court, and that the roughly 100-to-1 ratio the $79.5 million award bore to the compensatory damages amount indicated a "grossly excessive" punitive award.

Held:

1. A punitive damages award based in part on a jury's desire to punish a defendant for harming nonparties amounts to a taking of property from the defendant without due process. Pp. 352–357.

(a) While "[p]unitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition," *BMW of North America, Inc.* v. *Gore*, 517 U. S. 559, 568, unless a State insists upon proper standards to cabin the jury's discretionary authority, its punitive damages system may deprive a defendant of "fair notice . . . of the severity of the penalty that a State may impose," *id.*, at 574; may threaten "arbitrary punishments," *State Farm Mut. Automobile Ins. Co.* v. *Campbell*, 538 U. S. 408, 416; and, where the amounts are sufficiently large, may impose one State's (or one jury's) "policy choice" upon "neighboring States" with different public policies, *BMW*, *supra*, at 571–572. Thus, the Constitution imposes limits on both the procedures for awarding punitive damages and amounts forbidden as "grossly excessive." See *Honda Motor Co.* v. *Oberg*, 512 U. S. 415, 432. The Constitution's procedural limitations are considered here. Pp. 352–353.

(b) The Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury inflicted on strangers to the litigation. For one thing, a defendant threatened with punishment for

such injury has no opportunity to defend against the charge. See *Lindsey* v. *Normet*, 405 U. S. 56, 66. For another, permitting such punishment would add a near standardless dimension to the punitive damages equation and magnify the fundamental due process concerns of this Court's pertinent cases—arbitrariness, uncertainty, and lack of notice. Finally, the Court finds no authority to support using punitive damages awards to punish a defendant for harming others. *BMW*, *supra*, at 568, n. 11, distinguished. Respondent argues that showing harm to others is relevant to a different part of the punitive damages constitutional equation, namely, reprehensibility. While evidence of actual harm to nonparties can help to show that the conduct that harmed the plaintiff also posed a substantial risk to the general public, and so was particularly reprehensible, a jury may not go further and use a punitive damages verdict to punish a defendant directly for harms to those nonparties. Given the risks of unfairness, it is constitutionally important for a court to provide assurance that a jury is asking the right question; and given the risks of arbitrariness, inadequate notice, and imposing one State's policies on other States, it is particularly important that States avoid procedure that unnecessarily deprives juries of proper legal guidance. Pp. 353–355.

(c) The Oregon Supreme Court's opinion focused on more than reprehensibility. In rejecting Philip Morris' claim that the Constitution prohibits using punitive damages to punish a defendant for harm to nonparties, it made three statements. The first—that this Court held in *State Farm* only that a jury could not base an award on dissimilar acts of a defendant—was correct, but this Court now explicitly holds that a jury may not punish for harm to others. This Court disagrees with the second statement—that if a jury cannot punish for the conduct, there is no reason to consider it—since the Due Process Clause prohibits a State's inflicting punishment for harm to nonparties, but permits a jury to consider such harm in determining reprehensibility. The third statement—that it is unclear how a jury could consider harm to nonparties and then withhold that consideration from the punishment calculus—raises the practical problem of how to know whether a jury punished the defendant for causing injury to others rather than just took such injury into account under the rubric of reprehensibility. The answer is that state courts cannot authorize procedures that create an unreasonable and unnecessary risk of any such confusion occurring. Although States have some flexibility in determining what kind of procedures to implement to protect against that risk, federal constitutional law obligates them to provide some form of protection where the risk of misunderstanding is a significant one. Pp. 355–357.

Syllabus

2. Because the Oregon Supreme Court's application of the correct standard may lead to a new trial, or a change in the level of the punitive damages award, this Court will not consider the question whether the award is constitutionally "grossly excessive." Pp. 357–358.

340 Ore. 35, 127 P. 3d 1165, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, SOUTER, and ALITO, JJ., joined. STEVENS, J., *post*, p. 358, and THOMAS, J., *post*, p. 361, filed dissenting opinions. GINSBURG, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined, *post*, p. 362.

Andrew L. Frey argued the cause for petitioner. With him on the briefs were *Andrew H. Schapiro*, *Lauren R. Goldman*, *Murray R. Garnick*, *Kenneth S. Geller*, *Evan M. Tager*, *William F. Gary*, and *Sharon A. Rudnick*.

Robert S. Peck argued the cause for respondent. With him on the brief were *Ned Miltenberg*, *Charles S. Tauman*, *James S. Coon*, *Raymond F. Thomas*, *William A. Gaylord*, *Maureen Leonard*, and *Kathryn H. Clarke*.*

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*Briefs of *amici curiae* urging reversal were filed for the Alliance of Automobile Manufacturers by *H. Christopher Bartolomucci* and *John T. Whatley*; for the American Tort Reform Association by *Roy T. Englert, Jr.*, and *Alan E. Untereiner*; for the Chamber of Commerce of the United States of America by *Jonathan D. Hacker*, *Robin S. Conrad*, and *Amar D. Sarwal*; for the National Association of Manufacturers et al. by *Gene C. Schaerr*, *Steffen N. Johnson*, *Linda T. Coberly*, *Jan S. Amundson*, *Quentin Riegel*, and *Donald D. Evans*; for the National Association of Mutual Insurance Cos. et al. by *Sheila L. Birnbaum*, *Barbara Wrubel*, *Douglas W. Dunham*, *Ellen P. Quackenbos*, *J. Stephen Zielezienski*, *David F. Snyder*, and *Allan J. Stein*; for the Pacific Legal Foundation by *Deborah J. La Fetra* and *Timothy Sandefur*; for the Product Liability Advisory Council by *Theodore B. Olson*, *Thomas H. Dupree, Jr.*, and *Theodore J. Boutrous, Jr.*; for R. J. Reynolds Tobacco Co. et al. by *Meir Feder*, *Charles R. A. Morse*, *James T. Newsom*, *Donald B. Ayer*, and *Robert H. Klonoff*; for the Washington Legal Foundation et al. by *Arvin Maskin*, *Daniel J. Popeo*, and *Paul D. Kamenar*; and for Steven L. Chanenson et al. by *Robert D. Fox* and *John F. Gullace*.

Briefs of *amici curiae* urging affirmance were filed for the State of Oregon et al. by *Hardy Myers*, Attorney General of Oregon, *Peter Shepherd*, Deputy Attorney General, *Mary H. Williams*, Solicitor General, and *Janet A. Metcalf* and *Kaye E. McDonald*, Assistant Attorneys General,

JUSTICE BREYER delivered the opinion of the Court.

The question we address today concerns a large state-court punitive damages award. We are asked whether the Constitution's Due Process Clause permits a jury to base that award in part upon its desire to *punish* the defendant for harming persons who are not before the court (*e. g.*, victims whom the parties do not represent). We hold that such an award would amount to a taking of "property" from the defendant without due process.

I

This lawsuit arises out of the death of Jesse Williams, a heavy cigarette smoker. Respondent, Williams' widow, represents his estate in this state lawsuit for negligence and deceit against Philip Morris, the manufacturer of Marlboro, the brand that Williams favored. A jury found that Williams' death was caused by smoking; that Williams smoked in significant part because he thought it was safe to do so;

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and by the Attorneys General for their respective States as follows: *Bill Lockyer* of California, *J. Joseph Curran, Jr.*, of Maryland, *Mike Hatch* of Minnesota, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Patricia A. Madrid* of New Mexico, *W. A. Drew Edmondson* of Oklahoma, *Mark L. Shurtleff* of Utah, and *Peg Lautenschlager* of Wisconsin; for AARP et al. by *Elizabeth J. Cabraser* and *Deborah Zuckerman*; for the Association of Trial Lawyers of America by *Gerson H. Smoger* and *Brent M. Rosenthal*; for the Campaign for Tobacco-Free Kids et al. by *William B. Schultz*; for the Center for a Just Society by *Brian G. Brooks*; for Trial Lawyers for Public Justice by *Michael V. Ciresi*, *Roberta B. Walburn*, *Arthur H. Bryant*, and *Leslie A. Brueckner*; for Henry H. Drummonds et al. by *Steven C. Berman*; for Keith N. Hylton et al. by *Ronald Simon*, *Ed Bell*, *Patrick Carr*, *Richard L. Denney*, *Charles Siegel*, and *Gerry L. Spence*; and for Neil Vidmar et al. by *Frederick M. Baron*.

Briefs of *amici curiae* were filed for the Oregon Forest Industries Council et al. by *Thomas W. Brown*; for the Tobacco Control Legal Consortium et al. by *Edward L. Sweda, Jr.*; for Akhil Reed Amar et al. by *Kenneth Chesebro*, *Michael J. Pinze*, and *Arthur McEvoy*; and for A. Mitchell Polinsky et al. by *Timothy Lynch*.

and that Philip Morris knowingly and falsely led him to believe that this was so. The jury ultimately found that Philip Morris was negligent (as was Williams) and that Philip Morris had engaged in deceit. In respect to deceit, the claim at issue here, it awarded compensatory damages of about $821,000 (about $21,000 economic and $800,000 noneconomic) along with $79.5 million in punitive damages.

The trial judge subsequently found the $79.5 million punitive damages award "excessive," see, *e. g.*, *BMW of North America, Inc.* v. *Gore*, 517 U. S. 559 (1996), and reduced it to $32 million. Both sides appealed. The Oregon Court of Appeals rejected Philip Morris' arguments and restored the $79.5 million jury award. Subsequently, Philip Morris sought review in the Oregon Supreme Court (which denied review) and then here. We remanded the case in light of *State Farm Mut. Automobile Ins. Co.* v. *Campbell*, 538 U. S. 408 (2003). 540 U. S. 801 (2003). The Oregon Court of Appeals adhered to its original views. And Philip Morris sought, and this time obtained, review in the Oregon Supreme Court.

Philip Morris then made two arguments relevant here. First, it said that the trial court should have accepted, but did not accept, a proposed "punitive damages" instruction that specified the jury could not seek to punish Philip Morris for injury to other persons not before the court. In particular, Philip Morris pointed out that the plaintiff's attorney had told the jury to "think about how many other Jesse Williams in the last 40 years in the State of Oregon there have been. . . . In Oregon, how many people do we see outside, driving home . . . smoking cigarettes? . . . [C]igarettes . . . are going to kill ten [of every hundred]. [And] the market share of Marlboros [*i. e.*, Philip Morris] is one-third [*i. e.*, one of every three killed]." App. 197a, 199a. In light of this argument, Philip Morris asked the trial court to tell the jury that "you may consider the extent of harm suffered by others in determining what [the] reasonable relationship is" be-

tween any punitive award and "the harm caused to Jesse Williams" by Philip Morris' misconduct, "[but] you are not to punish the defendant for the impact of its alleged misconduct on other persons, who may bring lawsuits of their own in which other juries can resolve their claims . . . ." *Id.*, at 280a. The judge rejected this proposal and instead told the jury that "[p]unitive damages are awarded against a defendant to punish misconduct and to deter misconduct," and "are not intended to compensate the plaintiff or anyone else for damages caused by the defendant's conduct." *Id.*, at 283a. In Philip Morris' view, the result was a significant likelihood that a portion of the $79.5 million award represented punishment for its having harmed others, a punishment that the Due Process Clause would here forbid.

Second, Philip Morris pointed to the roughly 100-to-1 ratio the $79.5 million punitive damages award bears to $821,000 in compensatory damages. Philip Morris noted that this Court in *BMW* emphasized the constitutional need for punitive damages awards to reflect (1) the "reprehensibility" of the defendant's conduct, (2) a "reasonable relationship" to the harm the plaintiff (or related victim) suffered, and (3) the presence (or absence) of "sanctions," *e. g.*, criminal penalties, that state law provided for comparable conduct, 517 U. S., at 575–585. And in *State Farm*, this Court said that the longstanding historical practice of setting punitive damages at two, three, or four times the size of compensatory damages, while "not binding," is "instructive," and that "[s]ingle-digit multipliers are more likely to comport with due process." 538 U. S., at 425. Philip Morris claimed that, in light of this case law, the punitive award was "grossly excessive." See *TXO Production Corp.* v. *Alliance Resources Corp.*, 509 U. S. 443, 458 (1993) (plurality opinion); *BMW*, *supra*, at 574–575; *State Farm*, *supra*, at 416–417.

The Oregon Supreme Court rejected these and other Philip Morris arguments. In particular, it rejected Philip Morris' claim that the Constitution prohibits a state jury

"from using punitive damages to punish a defendant for harm to nonparties." 340 Ore. 35, 51–52, 127 P. 3d 1165, 1175 (2006). And in light of Philip Morris' reprehensible conduct, it found that the $79.5 million award was not "grossly excessive." *Id.*, at 63–64, 127 P. 3d, at 1181–1182.

Philip Morris then sought certiorari. It asked us to consider, among other things, (1) its claim that Oregon had unconstitutionally permitted it to be punished for harming nonparty victims; and (2) whether Oregon had in effect disregarded "the constitutional requirement that punitive damages be reasonably related to the plaintiff's harm." Pet. for Cert. (I). We granted certiorari limited to these two questions.

For reasons we shall set forth, we consider only the first of these questions. We vacate the Oregon Supreme Court's judgment, and we remand the case for further proceedings.

II

This Court has long made clear that "[p]unitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition." *BMW*, *supra*, at 568. See also *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 350 (1974); *Newport* v. *Fact Concerts, Inc.*, 453 U. S. 247, 266–267 (1981); *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U. S. 1, 22 (1991). At the same time, we have emphasized the need to avoid an arbitrary determination of an award's amount. Unless a State insists upon proper standards that will cabin the jury's discretionary authority, its punitive damages system may deprive a defendant of "fair notice . . . of the severity of the penalty that a State may impose," *BMW*, *supra*, at 574; it may threaten "arbitrary punishments," *i. e.*, punishments that reflect not an "application of law" but "a decisionmaker's caprice," *State Farm*, *supra*, at 416, 418 (internal quotation marks omitted); and, where the amounts are sufficiently large, it may impose one State's (or one jury's) "policy choice," say, as to the condi-

tions under which (or even whether) certain products can be sold, upon "neighboring States" with different public policies, *BMW*, *supra*, at 571–572.

For these and similar reasons, this Court has found that the Constitution imposes certain limits, in respect both to procedures for awarding punitive damages and to amounts forbidden as "grossly excessive." See *Honda Motor Co.* v. *Oberg*, 512 U. S. 415, 432 (1994) (requiring judicial review of the size of punitive awards); *Cooper Industries, Inc.* v. *Leatherman Tool Group, Inc.*, 532 U. S. 424, 443 (2001) (review must be *de novo*); *BMW*, *supra*, at 574–585 (excessiveness decision depends upon the reprehensibility of the defendant's conduct, whether the award bears a reasonable relationship to the actual and potential harm caused by the defendant to the plaintiff, and the difference between the award and sanctions "authorized or imposed in comparable cases"); *State Farm*, *supra*, at 425 (excessiveness more likely where ratio exceeds single digits). Because we shall not decide whether the award here at issue is "grossly excessive," we need now only consider the Constitution's procedural limitations.

III

In our view, the Constitution's Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly represent, *i. e.*, injury that it inflicts upon those who are, essentially, strangers to the litigation. For one thing, the Due Process Clause prohibits a State from punishing an individual without first providing that individual with "an opportunity to present every available defense." *Lindsey* v. *Normet*, 405 U. S. 56, 66 (1972) (internal quotation marks omitted). Yet a defendant threatened with punishment for injuring a nonparty victim has no opportunity to defend against the charge, by showing, for example in a case such as this, that the other victim was not entitled to dam-

ages because he or she knew that smoking was dangerous or did not rely upon the defendant's statements to the contrary.

For another, to permit punishment for injuring a nonparty victim would add a near standardless dimension to the punitive damages equation. How many such victims are there? How seriously were they injured? Under what circumstances did injury occur? The trial will not likely answer such questions as to nonparty victims. The jury will be left to speculate. And the fundamental due process concerns to which our punitive damages cases refer—risks of arbitrariness, uncertainty, and lack of notice—will be magnified. *State Farm*, 538 U. S., at 416, 418; *BMW*, 517 U. S., at 574.

Finally, we can find no authority supporting the use of punitive damages awards for the purpose of punishing a defendant for harming others. We have said that it may be appropriate to consider the reasonableness of a punitive damages award in light of the *potential* harm the defendant's conduct could have caused. But we have made clear that the potential harm at issue was harm potentially caused *the plaintiff*. See *State Farm*, *supra*, at 424 ("[W]e have been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, *to the plaintiff* and the punitive damages award" (emphasis added)). See also *TXO*, 509 U. S., at 460–462 (plurality opinion) (using same kind of comparison as basis for finding a punitive award not unconstitutionally excessive). We did use the term "error-free" (in *BMW*) to describe a lower court punitive damages calculation that likely included harm to others in the equation. 517 U. S., at 568, n. 11. But context makes clear that the term "error-free" in the *BMW* footnote referred to errors relevant to the case at hand. Although elsewhere in *BMW* we noted that there was no suggestion that the plaintiff "or any other BMW purchaser was threatened with any additional potential harm" by the defendant's conduct, we did not purport to decide the question of harm to others. *Id.*, at 582. Rather, the opinion appears to have left the question open.

Respondent argues that she is free to show harm to other victims because it is relevant to a different part of the punitive damages constitutional equation, namely, reprehensibility. That is to say, harm to others shows more reprehensible conduct. Philip Morris, in turn, does not deny that a plaintiff may show harm to others in order to demonstrate reprehensibility. Nor do we. Evidence of actual harm to nonparties can help to show that the conduct that harmed the plaintiff also posed a substantial risk of harm to the general public, and so was particularly reprehensible—although counsel may argue in a particular case that conduct resulting in no harm to others nonetheless posed a grave risk to the public, or the converse. Yet for the reasons given above, a jury may not go further than this and use a punitive damages verdict to punish a defendant directly on account of harms it is alleged to have visited on nonparties.

Given the risks of unfairness that we have mentioned, it is constitutionally important for a court to provide assurance that the jury will ask the right question, not the wrong one. And given the risks of arbitrariness, the concern for adequate notice, and the risk that punitive damages awards can, in practice, impose one State's (or one jury's) policies (*e. g.*, banning cigarettes) upon other States—all of which accompany awards that, today, may be many times the size of such awards in the 18th and 19th centuries, see *id.*, at 594–595 (BREYER, J., concurring)—it is particularly important that States avoid procedure that unnecessarily deprives juries of proper legal guidance. We therefore conclude that the Due Process Clause requires States to provide assurance that juries are not asking the wrong question, *i. e.*, seeking, not simply to determine reprehensibility, but also to punish for harm caused strangers.

IV

Respondent suggests as well that the Oregon Supreme Court, in essence, agreed with us, that it did not authorize punitive damages awards based upon punishment for harm caused to nonparties. We concede that one might read some

portions of the Oregon Supreme Court's opinion as focusing only upon reprehensibility. See, *e. g.*, 340 Ore., at 51, 127 P. 3d, at 1175 ("[T]he jury could consider whether Williams and his misfortune were merely exemplars of the harm that Philip Morris was prepared to inflict on the smoking public at large"). But the Oregon court's opinion elsewhere makes clear that that court held more than these few phrases might suggest.

The instruction that Philip Morris said the trial court should have given distinguishes between using harm to others as part of the "reasonable relationship" equation (which it would allow) and using it directly as a basis for punishment. The instruction asked the trial court to tell the jury that "you *may* consider the extent of harm suffered by others *in determining what [the] reasonable relationship is*" between Philip Morris' punishable misconduct and harm caused to Jesse Williams, "*[but] you are not to punish the defendant for the impact of its alleged misconduct on other persons, who may bring lawsuits of their own* in which other juries can resolve their claims . . . ." App. 280a (emphasis added). And as the Oregon Supreme Court explicitly recognized, Philip Morris argued that the Constitution "prohibits the state, acting through a civil jury, from using punitive damages to punish a defendant for harm to nonparties." 340 Ore., at 51–52, 127 P. 3d, at 1175.

The court rejected that claim. In doing so, it pointed out (1) that this Court in *State Farm* had held only that a jury could not base its award upon "dissimilar" acts of a defendant. 340 Ore., at 52–53, 127 P. 3d, at 1175–1176. It added (2) that "[i]f a jury cannot punish for the conduct, then it is difficult to see why it may consider it at all." *Id.*, at 52, n. 3, 127 P. 3d, at 1175, n. 3. And it stated (3) that "[i]t is unclear to us how a jury could 'consider' harm to others, yet withhold that consideration from the punishment calculus." *Ibid.*

The Oregon court's first statement is correct. We did not previously hold explicitly that a jury may not punish for the

harm caused others. But we do so hold now. We do not agree with the Oregon court's second statement. We have explained why we believe the Due Process Clause prohibits a State's inflicting punishment for harm caused strangers to the litigation. At the same time we recognize that conduct that risks harm to many is likely more reprehensible than conduct that risks harm to only a few. And a jury consequently may take this fact into account in determining reprehensibility. Cf., *e. g.*, *Witte* v. *United States*, 515 U. S. 389, 400 (1995) (recidivism statutes taking into account a criminal defendant's other misconduct do not impose an "'additional penalty for the earlier crimes,' but instead . . . 'a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one'" (quoting *Gryger* v. *Burke*, 334 U. S. 728, 732 (1948))).

The Oregon court's third statement raises a practical problem. How can we know whether a jury, in taking account of harm caused others under the rubric of reprehensibility, also seeks to *punish* the defendant for having caused injury to others? Our answer is that state courts cannot authorize procedures that create an unreasonable and unnecessary risk of any such confusion occurring. In particular, we believe that where the risk of that misunderstanding is a significant one—because, for instance, of the sort of evidence that was introduced at trial or the kinds of argument the plaintiff made to the jury—a court, upon request, must protect against that risk. Although the States have some flexibility to determine what *kind* of procedures they will implement, federal constitutional law obligates them to provide *some* form of protection in appropriate cases.

V

As the preceding discussion makes clear, we believe that the Oregon Supreme Court applied the wrong constitutional standard when considering Philip Morris' appeal. We remand this case so that the Oregon Supreme Court can apply

the standard we have set forth. Because the application of this standard may lead to the need for a new trial, or a change in the level of the punitive damages award, we shall not consider whether the award is constitutionally "grossly excessive." We vacate the Oregon Supreme Court's judgment and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE STEVENS, dissenting.

The Due Process Clause of the Fourteenth Amendment imposes both substantive and procedural constraints on the power of the States to impose punitive damages on tortfeasors. See *State Farm Mut. Automobile Ins. Co.* v. *Campbell*, 538 U. S. 408 (2003); *Cooper Industries, Inc.* v. *Leatherman Tool Group, Inc.*, 532 U. S. 424 (2001); *BMW of North America, Inc.* v. *Gore*, 517 U. S. 559 (1996); *Honda Motor Co.* v. *Oberg*, 512 U. S. 415 (1994); *TXO Production Corp.* v. *Alliance Resources Corp.*, 509 U. S. 443 (1993). I remain firmly convinced that the cases announcing those constraints were correctly decided. In my view the Oregon Supreme Court faithfully applied the reasoning in those opinions to the egregious facts disclosed by this record. I agree with JUSTICE GINSBURG's explanation of why no procedural error even arguably justifying reversal occurred at the trial in this case. See *post*, p. 362 (dissenting opinion).

Of greater importance to me, however, is the Court's imposition of a novel limit on the State's power to impose punishment in civil litigation. Unlike the Court, I see no reason why an interest in punishing a wrongdoer "for harming persons who are not before the court," *ante*, at 349, should not be taken into consideration when assessing the appropriate sanction for reprehensible conduct.

Whereas compensatory damages are measured by the harm the defendant has caused the plaintiff, punitive damages are a sanction for the public harm the defendant's con-

duct has caused or threatened. There is little difference between the justification for a criminal sanction, such as a fine or a term of imprisonment, and an award of punitive damages. See *Cooper Industries*, 532 U. S., at 432. In our early history either type of sanction might have been imposed in litigation prosecuted by a private citizen. See *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 127–128 (1998) (STEVENS, J., concurring in judgment). And while in neither context would the sanction typically include a pecuniary award measured by the harm that the conduct had caused to any third parties, in both contexts the harm to third parties would surely be a relevant factor to consider in evaluating the reprehensibility of the defendant's wrongdoing. We have never held otherwise.

In the case before us, evidence attesting to the possible harm the defendant's extensive deceitful conduct caused other Oregonians was properly presented to the jury. No evidence was offered to establish an appropriate measure of damages to compensate such third parties for their injuries, and no one argued that the punitive damages award would serve any such purpose. To award compensatory damages to remedy such third-party harm might well constitute a taking of property from the defendant without due process, cf. *ante*, at 349. But a punitive damages award, instead of serving a compensatory purpose, serves the entirely different purposes of retribution and deterrence that underlie every criminal sanction. *State Farm*, 538 U. S., at 416. This justification for punitive damages has even greater salience when, as in this case, see Ore. Rev. Stat. §31.735(1) (2003), the award is payable in whole or in part to the State rather than to the private litigant.[1]

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[1] The Court's holding in *Browning-Ferris Industries of Vt., Inc.* v. *Kelco Disposal, Inc.*, 492 U. S. 257 (1989), distinguished, for the purposes of appellate review under the Excessive Fines Clause of the Eighth Amendment, between criminal sanctions and civil fines awarded entirely to the plaintiff. The fact that part of the award in this case is payable to the

While apparently recognizing the novelty of its holding, *ante*, at 356–357, the majority relies on a distinction between taking third-party harm into account in order to assess the reprehensibility of the defendant's conduct—which is permitted—and doing so in order to punish the defendant "directly"—which is forbidden. *Ante*, at 355. This nuance eludes me. When a jury increases a punitive damages award because injuries to third parties enhanced the reprehensibility of the defendant's conduct, the jury is by definition punishing the defendant—directly—for third-party harm.[2] A murderer who kills his victim by throwing a bomb that injures dozens of bystanders should be punished more severely than one who harms no one other than his intended victim. Similarly, there is no reason why the measure of the appropriate punishment for engaging in a campaign of deceit in distributing a poisonous and addictive substance to thousands of cigarette smokers statewide should not include consideration of the harm to those "bystanders" as well as the harm to the individual plaintiff. The Court endorses a contrary conclusion without providing us with any reasoned justification.

It is far too late in the day to argue that the Due Process Clause merely guarantees fair procedure and imposes no

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State lends further support to my conclusion that it should be treated as the functional equivalent of a criminal sanction. See *id.*, at 263–264. I continue to agree with Justice O'Connor and those scholars who have concluded that the Excessive Fines Clause is applicable to punitive damages awards regardless of who receives the ultimate payout. See *id.*, at 286–299 (opinion concurring in part and dissenting in part).

[2] It is no answer to refer, as the majority does, to recidivism statutes. *Ante*, at 357. In that context, we have distinguished between taking prior crimes into account as an aggravating factor in penalizing the conduct before the court versus doing so to punish for the earlier crimes. *Ibid.* But if enhancing a penalty for a present crime because of prior conduct that has already been punished is permissible, it is certainly proper to enhance a penalty because the conduct before the court, which has never been punished, injured multiple victims.

substantive limits on a State's lawmaking power. See, *e. g.*, *Moore* v. *East Cleveland*, 431 U. S. 494, 544 (1977) (White, J., dissenting); *Poe* v. *Ullman*, 367 U. S. 497, 540–541 (1961) (Harlan, J., dissenting); *Whitney* v. *California*, 274 U. S. 357, 373 (1927) (Brandeis, J., concurring). It remains true, however, that the Court should be "reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." *Collins* v. *Harker Heights*, 503 U. S. 115, 125 (1992). Judicial restraint counsels us to "exercise the utmost care whenever we are asked to break new ground in this field." *Ibid.* Today the majority ignores that sound advice when it announces its new rule of substantive law.

Essentially for the reasons stated in the opinion of the Supreme Court of Oregon, I would affirm its judgment.

JUSTICE THOMAS, dissenting.

I join JUSTICE GINSBURG's dissent in full. I write separately to reiterate my view that "'the Constitution does not constrain the size of punitive damages awards.'" *State Farm Mut. Automobile Ins. Co.* v. *Campbell*, 538 U. S. 408, 429–430 (2003) (THOMAS, J., dissenting) (quoting *Cooper Industries, Inc.* v. *Leatherman Tool Group, Inc.*, 532 U. S. 424, 443 (2001) (THOMAS, J., concurring)). It matters not that the Court styles today's holding as "procedural" because the "procedural" rule is simply a confusing implementation of the substantive due process regime this Court has created for punitive damages. See *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U. S. 1, 26–27 (1991) (SCALIA, J., concurring in judgment) ("In 1868 . . . punitive damages were undoubtedly an established part of the American common law of torts. It is . . . clear that no particular procedures were deemed necessary to circumscribe a jury's discretion regarding the award of such damages, or their amount"). Today's opinion proves once again that this Court's punitive damages jurisprudence is "insusceptible of principled application." *BMW of North*

America, Inc. v. *Gore*, 517 U. S. 559, 599 (1996) (SCALIA, J., joined by THOMAS, J., dissenting).

JUSTICE GINSBURG, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

The purpose of punitive damages, it can hardly be denied, is not to compensate, but to punish. Punish for what? Not for harm actually caused "strangers to the litigation," *ante*, at 353, the Court states, but for the *reprehensibility* of defendant's conduct, *ante*, at 355. "[C]onduct that risks harm to many," the Court observes, "is likely more reprehensible than conduct that risks harm to only a few." *Ante*, at 357. The Court thus conveys that, when punitive damages are at issue, a jury is properly instructed to consider the extent of harm suffered by others as a measure of reprehensibility, but not to mete out punishment for injuries in fact sustained by nonparties. *Ante*, at 355–357. The Oregon courts did not rule otherwise. They have endeavored to follow our decisions, most recently in *BMW of North America, Inc.* v. *Gore*, 517 U. S. 559 (1996), and *State Farm Mut. Automobile Ins. Co.* v. *Campbell*, 538 U. S. 408 (2003), and have "deprive[d] [no jury] of proper legal guidance," *ante*, at 355. Vacation of the Oregon Supreme Court's judgment, I am convinced, is unwarranted.

The right question regarding reprehensibility, the Court acknowledges, *ante*, at 356, would train on "the harm that Philip Morris was prepared to inflict on the smoking public at large." *Ibid.* (quoting 340 Ore. 35, 51, 127 P. 3d 1165, 1175 (2006)). See also *id.*, at 55, 127 P. 3d, at 1177 ("[T]he jury, *in assessing the reprehensibility of Philip Morris's actions*, could consider evidence of similar harm to other Oregonians caused (or threatened) by the same conduct." (emphasis added)). The Court identifies no evidence introduced and no charge delivered inconsistent with that inquiry.

The Court's order vacating the Oregon Supreme Court's judgment is all the more inexplicable considering that Philip

Morris did not preserve any objection to the charges in fact delivered to the jury, to the evidence introduced at trial, or to opposing counsel's argument. The sole objection Philip Morris preserved was to the trial court's refusal to give defendant's requested charge number 34. See *id.*, at 54, 127 P. 3d, at 1176. The proposed instruction read in pertinent part:

> "If you determine that some amount of punitive damages should be imposed on the defendant, it will then be your task to set an amount that is appropriate. This should be such amount as you believe is necessary to achieve the objectives of deterrence and punishment. While there is no set formula to be applied in reaching an appropriate amount, I will now advise you of some of the factors that you may wish to consider in this connection.
>
> "(1) The size of any punishment should bear a reasonable relationship to the harm caused to Jesse Williams by the defendant's punishable misconduct. Although you may consider the extent of harm suffered by others in determining what that reasonable relationship is, you are not to punish the defendant for the impact of its alleged misconduct on other persons, who may bring lawsuits of their own in which other juries can resolve their claims and award punitive damages for those harms, as such other juries see fit.
>
> . . . . .
>
> "(2) The size of the punishment may appropriately reflect the degree of reprehensibility of the defendant's conduct—that is, how far the defendant has departed from accepted societal norms of conduct." App. 280a.

Under that charge, just what use could the jury properly make of "the extent of harm suffered by others"? The answer slips from my grasp. A judge seeking to enlighten rather than confuse surely would resist delivering the requested charge.

The Court ventures no opinion on the propriety of the charge proposed by Philip Morris, though Philip Morris preserved no other objection to the trial proceedings. Rather than addressing the one objection Philip Morris properly preserved, the Court reaches outside the bounds of the case as postured when the trial court entered its judgment. I would accord more respectful treatment to the proceedings and dispositions of state courts that sought diligently to adhere to our changing, less than crystalline precedent.

* * *

For the reasons stated, and in light of the abundant evidence of "the potential harm [Philip Morris'] conduct could have caused," *ante*, at 354 (emphasis deleted), I would affirm the decision of the Oregon Supreme Court.

Syllabus

MARRAMA *v.* CITIZENS BANK OF MASSACHUSETTS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 05–996. Argued November 6, 2006—Decided February 21, 2007

In filing his petition under Chapter 7 of the Bankruptcy Code, petitioner Marrama misrepresented the value of his Maine property and that he had not transferred it during the preceding year. Respondent DeGiacomo, the trustee of Marrama's estate, stated his intention to recover the Maine property as an estate asset. Thereafter, Marrama sought to convert the proceeding to Chapter 13, but the trustee and respondent bank, Marrama's principal creditor, objected, contending that the request to convert was made in bad faith and would constitute an abuse of the bankruptcy process. The Bankruptcy Judge denied Marrama's request, finding bad faith. Affirming, the First Circuit's Bankruptcy Appellate Panel rejected Marrama's argument that he had an absolute right to convert under § 706(a) of the Bankruptcy Code, which provides that a Chapter 7 debtor "may convert a case" so long as it has not been converted previously, and that a waiver of the right to convert is unenforceable. The First Circuit also rejected that argument, emphasizing, *inter alia*, that a bankruptcy court has the authority to dismiss a Chapter 13 petition based on a debtor's bad faith, and that a first-time motion to convert a Chapter 7 case to Chapter 13 should not be treated differently from the filing of a Chapter 13 petition in the first instance.

Held: Marrama forfeited his right to proceed under Chapter 13. The broad description of the right to convert as "absolute" in Senate and House Committee Reports fails to give full effect to the express limitation of § 706(d), which provides that "a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter." That text expressly conditioned Marrama's right to convert on his ability to qualify as a Chapter 13 "debtor." Marrama does not qualify as such a debtor under § 1307(c), which provides that a Chapter 13 proceeding may be either dismissed or converted to a Chapter 7 proceeding "for cause." Bankruptcy courts routinely treat dismissal for prepetition bad-faith conduct as implicitly authorized by the words "for cause," and a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because

Syllabus

of bad faith is tantamount to a ruling that the individual does not qualify as a Chapter 13 debtor. Congress gave "'honest but unfortunate debtor[s],'" *Grogan* v. *Garner*, 498 U. S. 279, 287, the chance to repay their debts should they acquire the means to do so, and § 706(a) protects a debtor from being forced to waive that right. However, a provision protecting a borrower from waiver is not a shield against forfeiture. Neither § 706 nor § 1307(c) limits a court's authority to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor. On the contrary, bankruptcy judges' broad authority to take necessary or appropriate action "to prevent an abuse of process" described in Code § 105(a) is adequate to authorize an immediate denial of a § 706 motion to convert in lieu of a conversion order that merely postpones the allowance of equivalent relief and may give a debtor an opportunity to take action prejudicial to creditors. Pp. 371–376.

430 F. 3d 474, affirmed.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and SCALIA and THOMAS, JJ., joined, *post*, p. 376.

David G. Baker argued the cause for petitioner. With him on the briefs was *Jeffrey A. Kitaeff.*

G. Eric Brunstad, Jr., argued the cause for respondents. With him on the brief for respondent Citizens Bank of Massachusetts were *Rheba Rutkowski* and *William C. Heuer.* Respondent *Mark G. DeGiacomo* filed a brief *pro se.* With him on the brief were *Olga L. Bogdanov* and *Taruna Garg.*

Lisa S. Blatt argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Solicitor General Clement, Deputy Solicitor General Hungar, P. Matthew Sutko,* and *Knight Elsberry.**

**Seth P. Waxman* and *Craig Goldblatt* filed a brief for the National Association of Consumer Bankruptcy Attorneys as *amicus curiae* urging reversal.

Lynne F. Riley filed a brief for the National Association of Bankruptcy Trustees as *amicus curiae* urging affirmance.

JUSTICE STEVENS delivered the opinion of the Court.

The principal purpose of the Bankruptcy Code is to grant a "'fresh start'" to the "'honest but unfortunate debtor.'" *Grogan* v. *Garner*, 498 U. S. 279, 286, 287 (1991). Both Chapter 7 and Chapter 13 of the Code permit an insolvent individual to discharge certain unpaid debts toward that end. Chapter 7 authorizes a discharge of prepetition debts following the liquidation of the debtor's assets by a bankruptcy trustee, who then distributes the proceeds to creditors. Chapter 13 authorizes an individual with regular income to obtain a discharge after the successful completion of a payment plan approved by the bankruptcy court. Under Chapter 7 the debtor's nonexempt assets are controlled by the bankruptcy trustee; under Chapter 13 the debtor retains possession of his property. A proceeding that is commenced under Chapter 7 may be converted to a Chapter 13 proceeding and vice versa. 11 U. S. C. §§ 706(a), 1307(a) and (c).

An issue that has arisen with disturbing frequency is whether a debtor who acts in bad faith prior to, or in the course of, filing a Chapter 13 petition by, for example, fraudulently concealing significant assets, thereby forfeits his right to obtain Chapter 13 relief. The issue may arise at the outset of a Chapter 13 case in response to a motion by creditors or by the United States trustee either to dismiss the case or to convert it to Chapter 7, see § 1307(c). It also may arise in a Chapter 7 case when a debtor files a motion under § 706(a) to convert to Chapter 13. In the former context, despite the absence of any statutory provision specifically addressing the issue, the federal courts are virtually unanimous that prepetition bad-faith conduct may cause a forfeiture of any right to proceed with a Chapter 13 case.[1] In the

[1] See, *e. g.*, *In re Alt*, 305 F. 3d 413, 418–419 (CA6 2002); *In re Leavitt*, 171 F. 3d 1219, 1224 (CA9 1999); *In re Kestell*, 99 F. 3d 146, 148 (CA4 1996); *In re Molitor*, 76 F. 3d 218, 220 (CA8 1996); *In re Gier*, 986 F. 2d 1326, 1329–1330 (CA10 1993); *In re Love*, 957 F. 2d 1350, 1354 (CA7 1992); *In re Sullivan*, 326 B. R. 204, 211 (Bkrtcy. App. Panel CA1 2005) *(per curiam)*.

latter context, however, some courts have suggested that even a bad-faith debtor has an absolute right to convert at least one Chapter 7 proceeding into a Chapter 13 case even though the case will thereafter be dismissed or immediately returned to Chapter 7.[2] We granted certiorari to decide whether the Code mandates that procedural anomaly. 547 U. S. 1191 (2006).

I

On March 11, 2003, petitioner, Robert Marrama, filed a voluntary petition under Chapter 7, thereby creating an estate consisting of all his property "wherever located and by whomever held." 11 U. S. C. § 541(a). Respondent Mark DeGiacomo is the trustee of that estate. Respondent Citizens Bank of Massachusetts (hereinafter Bank) is the principal creditor.

In verified schedules attached to his petition, Marrama made a number of statements about his principal asset, a house in Maine, that were misleading or inaccurate. For instance, while he disclosed that he was the sole beneficiary of the trust that owned the property, he listed its value as zero. He also denied that he had transferred any property other than in the ordinary course of business during the year preceding the filing of his petition. Neither statement was true. In fact, the Maine property had substantial value, and Marrama had transferred it into the newly created trust for no consideration seven months prior to filing his Chapter 7 petition. Marrama later admitted that the purpose of the transfer was to protect the property from his creditors.

After Marrama's examination at the meeting of creditors, see 11 U. S. C. § 341, the trustee advised Marrama's counsel that he intended to recover the Maine property as an asset of the estate. Thereafter, Marrama filed a "Verified Notice

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[2] See, *e. g.*, *In re Martin*, 880 F. 2d 857, 859 (CA5 1989); *In re Croston*, 313 B. R. 447 (Bkrtcy. App. Panel CA9 2004); *In re Miller*, 303 B. R. 471 (Bkrtcy. App. Panel CA10 2003).

of Conversion to Chapter 13." Pursuant to Federal Rule of Bankruptcy Procedure 1017(f)(2), the notice of conversion was treated as a motion to convert, to which both the trustee and the Bank filed objections. Relying primarily on Marrama's attempt to conceal the Maine property from his creditors,[3] the trustee contended that the request to convert was made in bad faith and would constitute an abuse of the bankruptcy process. The Bank opposed the conversion on similar grounds.

At the hearing on the conversion issue, Marrama explained through counsel that his misstatements about the Maine property were attributable to "scrivener's error," that he had originally filed under Chapter 7 rather than Chapter 13 because he was then unemployed, and that he had recently become employed and was therefore eligible to proceed under Chapter 13.[4] The Bankruptcy Judge rejected these

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[3] The trustee also noted that in his original verified schedules Marrama had claimed a property in Gloucester, Mass., as a homestead exemption, see 11 U. S. C. §522(b)(2); Mass. Gen. Laws, ch. 188, §1 (West 2005), but testified at the meeting of creditors that he did not reside at the property and was receiving rental income from it, App. 71a–72a. Moreover, when asked at the meeting whether anyone owed him any money, Marrama responded "No," *id.*, at 50a, and in response to a similar question on Schedule B to his petition, which specifically requested a description of any "tax refunds," Marrama indicated that he had "none," Supp. App. 6. In fact, Marrama had filed an amended tax return in July 2002 in which he claimed the right to a refund, and shortly before the hearing on the motion to convert, the Internal Revenue Service informed the trustee that Marrama was entitled to a refund of $8,745.86, App. 30a–31a.

[4] The parties dispute the accuracy of this representation. The trustee's brief notes that Schedule I to Marrama's original petition indicates that he had been employed by a flooring company at the time the case was filed. See Brief for Respondent Mark G. DeGiacomo 10, n. 7 (citing Supp. App. 18, 30). Marrama's counsel stated during oral argument, however, that the income listed in Schedule I represented an estimate based on employment that had not yet begun. Tr. of Oral Arg. 24. Since the sufficiency of the evidence of bad faith is not at issue, we may assume that Marrama did have more income available when he sought to convert than when he commenced the Chapter 7 case.

arguments, ruling that there is no "Oops" defense to the concealment of assets and that the facts established a "bad faith" case. App. 34a–35a. The judge denied the request for conversion.

Marrama's principal argument on appeal to the Bankruptcy Appellate Panel for the First Circuit[5] was that he had an absolute right to convert his case from Chapter 7 to Chapter 13 under the plain language of § 706(a) of the Code. The panel affirmed the decision of the Bankruptcy Court. It construed § 706(a), when read in connection with other provisions of the Code and the Bankruptcy Rules, as creating a right to convert a case from Chapter 7 to Chapter 13 that "is absolute only in the absence of extreme circumstances." *In re Marrama*, 313 B. R. 525, 531 (2004). In concluding that the record disclosed such circumstances, the panel relied on Marrama's failure to describe the transfer of the Maine residence into the revocable trust, his attempt to obtain a homestead exemption on rental property in Massachusetts, and his nondisclosure of an anticipated tax refund.

On appeal from the panel, the Court of Appeals for the First Circuit also rejected the argument that § 706(a) gives a Chapter 7 debtor an absolute right to convert to Chapter 13. In addition to emphasizing that the statute uses the word "may" rather than "shall," the court added:

> "In construing subsection 706(a), it is important to bear in mind that the bankruptcy court has unquestioned authority to dismiss a chapter 13 petition—as distinguished from converting the case to chapter 13—based upon a showing of 'bad faith' on the part of the debtor. We can discern neither a theoretical nor a practical reason that Congress would have chosen to treat a first-

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[5]The judicial council of any circuit is authorized by statute to establish a bankruptcy appellate panel service, comprising bankruptcy judges, to hear appeals from the bankruptcy courts with the consent of the parties. See 28 U. S. C. § 158(b); *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 252 (1992). The First Circuit has established this service.

time motion to convert a chapter 7 case to chapter 13 under subsection 706(a) differently from the filing of a chapter 13 petition in the first instance." *In re Marrama*, 430 F. 3d 474, 479 (2005) (citations omitted).

While other Courts of Appeals and Bankruptcy Appellate Panels have refused to recognize any "bad faith" exception to the conversion right created by § 706(a), see n. 2, *supra*, we conclude that the courts in this case correctly held that Marrama forfeited his right to proceed under Chapter 13.

II

The two provisions of the Bankruptcy Code most relevant to our resolution of the issue are subsections (a) and (d) of 11 U. S. C. § 706, which provide:

"(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

. . . . .

"(d) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter."

Petitioner contends that subsection (a) creates an unqualified right of conversion. He seeks support from language in both the House and Senate Committee Reports on the provision. The Senate Report stated:

"Subsection (a) of this section gives the debtor the one-time absolute right of conversion of a liquidation case to a reorganization or individual repayment plan case. If the case has already once been converted from chapter 11 or 13 to chapter 7, then the debtor does not have that right. The policy of the provision is that the debtor

> should always be given the opportunity to repay his debts, and a waiver of the right to convert a case is unenforceable." S. Rep. No. 95–989, p. 94 (1978); see also H. R. Rep. No. 95–595, p. 380 (1977) (using nearly identical language).

The Committee Reports' reference to an "absolute right" of conversion is more equivocal than petitioner suggests. Assuming that the described debtor's "opportunity to repay his debts" is a shorthand reference to a right to proceed under Chapter 13, the statement that he should "always" have that right is inconsistent with the earlier recognition that it is only a one-time right that does not survive a previous conversion to, or filing under, Chapter 13. More importantly, the broad description of the right as "absolute" fails to give full effect to the express limitation in subsection (d). The words "unless the debtor may be a debtor under such chapter" expressly conditioned Marrama's right to convert on his ability to qualify as a "debtor" under Chapter 13.

There are at least two possible reasons why Marrama may not qualify as such a debtor, one arising under § 109(e) of the Code, and the other turning on the construction of the word "cause" in § 1307(c). The former provision imposes a limit on the amount of indebtedness that an individual may have in order to qualify for Chapter 13 relief.[6] More pertinently,[7]

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[6] Subsection (e) of 11 U. S. C. § 109 provides:

"Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $250,000 and noncontingent, liquidated, secured debts of less than $750,000, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $250,000 and noncontingent, liquidated, secured debts of less than $750,000 may be a debtor under chapter 13 of this title."

These dollar limits are subject to adjustment for inflation every three years. See § 104(b).

[7] Marrama initiated a new Chapter 13 case the day after we granted certiorari in the present case. The new case was dismissed on the

the latter provision, § 1307(c), provides that a Chapter 13 proceeding may be either dismissed or converted to a Chapter 7 proceeding "for cause" and includes a nonexclusive list of 10 causes justifying that relief.[8] None of the specified causes mentions prepetition bad-faith conduct (although paragraph (10) does identify one form of Chapter 7 error—which is necessarily prepetition conduct—that would justify dismissal of a Chapter 13 case).[9] Bankruptcy courts nevertheless routinely treat dismissal for prepetition bad-faith conduct as implicitly authorized by the words "for cause." See n. 1, *supra*. In practical effect, a ruling that an individ-

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grounds that, under § 109(e), he was ineligible to be a Chapter 13 debtor. See *In re Marrama*, 345 B. R. 458, 463–464, and n. 10 (Bkrtcy. Ct. Mass. 2006). As the Bankruptcy Judge made no such determination on the record before us in this case, and as it is not necessary to our decision that such a determination be made, we do not consider whether Marrama fails to meet the § 109(e) debt limit.

[8] Title 11 U. S. C. § 1307(c) provides, in relevant part:

"Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

"(1) unreasonable delay by the debtor that is prejudicial to creditors;

"(2) nonpayment of any fees and charges required under chapter 123 of title 28;

"(3) failure to file a plan timely under section 1321 of this title;

. . . . . .

"(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521."

Section 521(2), which has since been amended and redesignated as § 521(a)(2), see 119 Stat. 38, imposes a duty on a debtor in a Chapter 7 proceeding to file within a certain time period a statement of intent with respect to the retention or surrender of property being used to secure debts. See 11 U. S. C. § 521(a)(2) (2000 ed., Supp. V).

[9] Indeed, because § 521(a)(2) by its terms applies only to Chapter 7 debtors, at least one prominent treatise has assumed that this subsection could only apply to a debtor who has converted a case from Chapter 7 to Chapter 13. See 8 Collier on Bankruptcy ¶ 1307.04[9] (rev. 15th ed. 2006).

ual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13. That individual, in other words, is not a member of the class of "'honest but unfortunate debtor[s]'" that the bankruptcy laws were enacted to protect. See *Grogan* v. *Garner*, 498 U. S., at 287. The text of § 706(d) therefore provides adequate authority for the denial of his motion to convert.

The class of honest but unfortunate debtors who do possess an absolute right to convert their cases from Chapter 7 to Chapter 13 includes the vast majority of the hundreds of thousands of individuals who file Chapter 7 petitions each year.[10] Congress sought to give these individuals the chance to repay their debts should they acquire the means to do so. Moreover, as the Court of Appeals observed, the reference in § 706(a) to the unenforceability of a waiver of the right to convert functions "as a consumer protection provision against adhesion contracts, whereby a debtor's creditors might be precluded from attempting to prescribe a waiver of the debtor's right to convert to chapter 13 as a non-negotiable condition of its contractual agreements." 430 F. 3d, at 479.

A statutory provision protecting a borrower from waiver is not a shield against forfeiture. Nothing in the text of either § 706 or § 1307(c) (or the legislative history of either provision) limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to

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[10] We are advised by the Administrative Office of the United States Courts that 833,148 Chapter 7 cases were filed in fiscal year 2006. Memorandum from Steven R. Schlesinger, Administrative Office of the United States Courts, to Supreme Court Library (Dec. 13, 2006) (available in Clerk of Court's case file).

the relief available to the typical debtor.[11] On the contrary, the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate "to prevent an abuse of process" described in § 105(a) of the Code,[12] is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors.[13]

Indeed, as the Solicitor General has argued in his brief *amicus curiae*, even if § 105(a) had not been enacted, the

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[11] We have no occasion here to articulate with precision what conduct qualifies as "bad faith" sufficient to permit a bankruptcy judge to dismiss a Chapter 13 case or to deny conversion from Chapter 7. It suffices to emphasize that the debtor's conduct must, in fact, be atypical. Limiting dismissal or denial of conversion to extraordinary cases is particularly appropriate in light of the fact that lack of good faith in proposing a Chapter 13 plan is an express statutory ground for denying plan confirmation. 11 U. S. C. § 1325(a)(3); see *In re Love*, 957 F. 2d, at 1356 ("Because dismissal is harsh . . . the bankruptcy court should be more reluctant to dismiss a petition . . . for lack of good faith than to reject a plan for lack of good faith under Section 1325(a)").

[12] Title 11 U. S. C. § 105(a) provides:

"The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

[13] Both the Chapter 7 trustee and the United States as *amicus curiae* argue in their briefs that in the interval between the allowance of a motion to convert under § 706(a) and the subsequent granting of a motion to dismiss under § 1307(c), the fact that the debtor would have possession of the property formerly under the control of the trustee would create an opportunity for the debtor to take actions that would impair the rights of creditors. Whether or not that risk is significant, under our understanding of the Code, the debtor's prior misconduct may provide a sufficient justification for a denial of his motion to convert.

inherent power of every federal court to sanction "abusive litigation practices," see *Roadway Express, Inc.* v. *Piper*, 447 U. S. 752, 765 (1980), might well provide an adequate justification for a prompt, rather than a delayed, ruling on an unmeritorious attempt to qualify as a debtor under Chapter 13.

Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE ALITO, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS join, dissenting.

Under the clear terms of the Bankruptcy Code, a debtor who initially files a petition under Chapter 7 has the right to convert the case to another chapter under which the case is eligible to proceed. The Court, however, holds that a debtor's conversion right is conditioned upon a bankruptcy judge's finding of "good faith." Because the imposition of this condition is inconsistent with the Bankruptcy Code, I respectfully dissent.

I

The Bankruptcy Code unambiguously provides that a debtor who has filed a bankruptcy petition under Chapter 7 has a broad right to convert the case to another chapter. Title 11 U. S. C. § 706(a) states:

> "[A] debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title."

The Code restricts a Chapter 7 debtor's conversion right in two—and only two—ways. First, § 706(a) makes clear that the right to convert is available only once: A debtor may convert so long as "the case has not been converted [to Chapter 7] under section 1112, 1208, or 1307 of this title." Second, § 706(d) provides that a debtor wishing to convert to another chapter must meet the conditions that are needed in

order to "be a debtor under such chapter." Nothing in § 706(a) or any other provision of the Code suggests that a bankruptcy judge has the discretion to override a debtor's exercise of the § 706(a) conversion right on a ground not set out in the Code. Thus, a straightforward reading of the Code suggests that a Chapter 7 debtor has the right to convert the debtor's case to Chapter 13 (or another chapter) provided that the two express statutory conditions contained in § 706 are satisfied.

This reading of the Code is buttressed by the contrast between the terms of § 706 and the language employed in other Code provisions that give bankruptcy judges the discretion to deny conversion requests. As noted, § 706(a) says that a Chapter 7 debtor "may convert" the debtor's case to another chapter. Chapters 11, 12, and 13 contain similar provisions stating that debtors under those chapters "may convert" their cases to other chapters. See §§ 1112(a), 1208(a), and 1307(a) (2000 ed. and Supp. IV). Chapters 11, 12, and 13 also contain separate provisions governing conversion requests by other parties in interest. For example, the applicable provision in Chapter 11 provides:

> "On request of a party in interest and after notice and a hearing, *the court may convert* a case under this chapter to a case under chapter 11 of this title at any time." § 706(b) (emphasis added).

See also §§ 1112(b), 1208(b), (d), and 1307(c).

In these sections, parties in interest are not given a right to convert. Rather, parties in interest are authorized to request conversion. And the authority to convert, after notice and a hearing, is expressly left to the discretion of the bankruptcy court, which "may convert" the case if the general standard of "cause" is found to have been met. If the Code had been meant to give a bankruptcy court similar authority when a Chapter 7 debtor wishes to convert, the Code would have used language similar to that in §§ 1112(b), 1208(b), (d),

and 1307(c). Congress knew how to limit conversion authority in this way, and it did not do so in § 706(a).

In Chapter 7, Congress did directly address the consequences of the sort of conduct complained of in this case. In § 727(a)(3), Congress specified that a debtor may be denied a discharge of debts if "the debtor has concealed . . . records, and papers, from which the debtor's financial condition or business transactions might be ascertained." The Code further provides that discharge may be denied if the debtor has "made a false oath or account" or "presented or used a false claim." § 727(a)(4). In addition to blocking discharge, Congress could easily have deemed such conduct sufficient to bar conversion to another chapter, but Congress did not do so.

Instead of taking that approach, Congress included in the statutory scheme several express means to redress a debtor's bad faith. First, if a bankruptcy court finds that there is "cause," the court may convert or reconvert a Chapter 11 or Chapter 13 restructuring to a Chapter 7 liquidation. §§ 1112(b), 1307(c). Second, a Chapter 13 debtor must propose a repayment plan to satisfy the debtor's creditors—a plan that is subject to court approval and must be proposed in good faith. §§ 1325(a)(3), (4); accord, § 1328(b)(2). Third, a debtor's asset schedules are filed under penalty of perjury. 28 U. S. C. § 1746; Fed. Rule Bkrtcy. Proc. 1008. Fourth, a Chapter 13 case is overseen by a trustee who is empowered to investigate the debtor's financial affairs, to furnish information regarding the bankruptcy estate to parties in interest, and to oppose discharge if necessary. 11 U. S. C. §§ 704(4), (6), and (9). See also § 1302(b) (defining the powers of a Chapter 13 trustee in part by reference to the powers of a Chapter 7 trustee). These measures, as opposed to the "good faith" requirement crafted by the Court, represent the Code's strategy for dealing with debtors who engage in the type of abusive tactics that the Court's opinion targets.[1]

[1] And as noted above, 11 U. S. C. § 727(a)(4) also addresses such conduct, making it a bar to discharge, but not to conversion.

In sum, the Code expressly gives a debtor who initially files under Chapter 7 the right to convert the case to another chapter so long as the debtor satisfies the requirements of the destination chapter. By contrast, the Code pointedly does not give the bankruptcy courts the authority to deny conversion based on a finding of "bad faith." There is no justification for disregarding the Code's scheme.

II

In reaching the conclusion that a bankruptcy judge may override a Chapter 7 debtor's conversion right based on a finding of "bad faith," the Court reasons as follows. Under § 706(d), a Chapter 7 debtor may not convert to another chapter "unless the debtor may be a debtor under such chapter." Under § 1307(c), a Chapter 13 proceeding may be dismissed or converted to Chapter 7 "for cause." One such "cause" recognized by bankruptcy courts is "bad faith." Therefore, a Chapter 7 debtor who has proceeded in "bad faith" and wishes to convert his or her case to Chapter 13 is not eligible to "be a debtor" under Chapter 13 because the debtor's case would be subject to dismissal or reconversion to Chapter 7 pursuant to § 1307(c). I cannot agree with this strained reading of the Code.

The requirements that must be met in order to "be a debtor" under Chapter 13 are set forth in 11 U. S. C. § 109 (2000 ed. and Supp. V), which is appropriately titled "Who may be a debtor." The two requirements that are specific to Chapter 13 appear in subsection (e). First, Chapter 13 is restricted to individuals, with or without their spouses, with regular income. Second, a debtor may not proceed under Chapter 13 if specified debt limits are exceeded.[2]

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[2] "Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $307,675 and noncontingent, liquidated, secured debts of less than $922,975, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date

As the Court of Appeals below correctly understood, § 706(d)'s requirement that a debtor may convert only if "the debtor may be a debtor under such chapter" obviously refers to the chapter-specific requirements of § 109. *In re Marrama*, 430 F. 3d 474, 479, n. 3 (CA1 2005).

Rather than reading §§ 109(e) and 706(d) together, the Court puts § 109(e) aside and treats § 706(d) as a separate repository of additional requirements (namely, the absence of the grounds for dismissal or reconversion under § 1307(c)) that a Chapter 7 debtor must satisfy *before* conversion to Chapter 13. But § 1307(c) plainly does not set out requirements that an individual must meet in order to "be a debtor" under Chapter 13. Instead, § 1307(c) sets out the standard ("cause") that a bankruptcy court must apply in deciding whether, in its discretion, an already filed Chapter 13 case should be dismissed or converted to Chapter 7. Thus, the Court's holding in this case finds no support in the terms of the Bankruptcy Code.

In holding that a bankruptcy judge may deny conversion based on "bad faith," the Court of Appeals appears to have been influenced by the belief that following the literal terms of the Code would be pointless. *Id.*, at 479–481. Specifically, the Court of Appeals observed that if a debtor who wishes to convert from Chapter 7 to Chapter 13 has exhibited such "bad faith" that the bankruptcy court would immediately convert the case back to Chapter 7 under § 1307(c), then no purpose would be served by requiring the parties and the court to go through the process of conversion and prompt reconversion. *Id.*, at 481.

It is by no means clear, however, that conversion under § 706(a) followed by a reconversion proceeding under § 1307(c) would be an empty exercise. The immediate prac-

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of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $307,675 and noncontingent, liquidated, secured debts of less than $922,975 may be a debtor under chapter 13 of this title." § 109(e) (footnote omitted).

tical effect of following the statutory scheme is compliance with Bankruptcy Rule 1017(f), which applies Bankruptcy Rule 9014 to the reconversion. Fed. Rule Bkrtcy. Proc. 1017(f)(1). Rule 9014(a), in turn, requires that the request be made by motion and that "reasonable notice and opportunity for hearing . . . be afforded the party against whom relief is sought." The Court's decision circumvents this process and forecloses the right that a Chapter 13 debtor would otherwise possess to file a Chapter 13 repayment and reorganization plan, 11 U. S. C. § 1321, which must be filed in good faith and which must demonstrate that creditors will receive no less than they would under an immediate Chapter 7 liquidation, §§ 1325(a)(3) and (4); accord, § 1328(b)(2). While the plan must be filed no later than 15 days after filing the petition or conversion, the debtor may file the plan at the time of conversion, *i. e.*, before the reconversion hearing. Fed. Rule Bkrtcy. Proc. 3015(b).

Moreover, it is not clear whether, in converting a case "for cause" under § 1307(c), a bankruptcy court must consider the debtor's plan (if already filed) and, if the plan must be considered, whether the court must take into account whether the plan was filed in good faith, whether it honestly discloses the debtor's assets, whether it demonstrates that creditors would in fact fare better under the plan than under a liquidation, and whether the plan in some sense "cures" prior bad faith. Today's opinion renders these questions academic, and little is left to guide what a bankruptcy court must consider, or may disregard, in blocking a § 706(a) conversion.[3]

The Court notes that the Bankruptcy Code is intended to give a "'"fresh start"'" to the "'"honest but unfortunate debtor."'" *Ante*, at 367, 374 (quoting *Grogan* v. *Garner*, 498 U. S. 279, 286, 287 (1991)). But compliance with the statutory scheme—conversion to Chapter 13 followed by notice

[3] Indeed, the only procedural guidance for such a situation is Federal Rule of Bankruptcy Procedure 1017(f)(2), which requires the filing of a motion to convert by the debtor and service thereof.

and a hearing on the question of reconversion—would at least provide some structure to the process of identifying those debtors whose "'bad faith'" meets the Court's standard for consignment to liquidation, *i. e.*, "'bad faith'" conduct that is "atypical" and "extraordinary." *Ante*, at 375, n. 11.

III

Finally, the Court notes two alternative bases for its holding. First, the Court points to 11 U. S. C. § 105(a), which governs a bankruptcy court's general powers.[4] Second, the Court suggests that even without a textual basis, a bankruptcy court's inherent power may empower it to deny a § 706(a) conversion request for bad faith. Obviously, however, neither of these sources of authority authorizes a bankruptcy court to contravene the Code. On the contrary, a bankruptcy court's general and equitable powers "must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington* v. *Ahlers*, 485 U. S. 197, 206 (1988); accord, *SEC* v. *United States Realty & Improvement Co.*, 310 U. S. 434, 455 (1940) ("A bankruptcy court . . . is guided by equitable doctrines and principles except in so far as they are inconsistent with the Act").

Ultimately, § 105(a) and a bankruptcy court's inherent powers may have a role to play in a case such as this. The problem the Court identifies is a real one. A debtor who is convinced that he or she can successfully conceal assets has a significant incentive to pursue Chapter 7 liquidation in lieu of a Chapter 13 restructuring. If successful, the debtor preserves wealth; if unsuccessful, the debtor can convert to Chapter 13 and land largely where the debtor would have

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[4] "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." § 105(a).

been if he or she had fully disclosed all assets and proceeded in Chapter 13 in the first instance.

Bankruptcy courts have used their statutory and equitable authority to craft various remedies for a range of bad faith conduct: requiring accountings or reporting of assets;[5] enjoining debtors from alienating estate property;[6] penalizing counsel;[7] assessing costs and fees;[8] or holding the debtor in contempt.[9] But whatever steps a bankruptcy court may take pursuant to § 105(a) or its general equitable powers, a bankruptcy court cannot contravene the provisions of the Code.

Because the provisions of the Code rule out the procedure that was followed in this case by the Bankruptcy Court, I would reverse the judgment of the Court of Appeals.

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[5] See, *e. g.*, *In re All Denominational New Church*, 268 B. R. 536 (Bkrtcy. App. Panel CA8 2001) (affirming dismissal for failure to comply with required monthly reporting); *In re Martin's Aquarium, Inc.*, 225 B. R. 868, 880 (Bkrtcy. Ct. ED Pa. 1998) ("[A] debtor may, in an appropriate case, be required to produce an accounting, and . . . a bankruptcy court does indeed have the power to so order [this equitable remedy]").

[6] See, *e. g.*, *In re Bartmann*, 320 B. R. 725, 732–733 (Bkrtcy. Ct. ND Okla. 2004); *In re Newport Creamery, Inc.*, 293 B. R. 293 (Bkrtcy. Ct. RI 2003); *In re Peklo*, 201 B. R. 331 (Bkrtcy. Ct. Conn. 1996).

[7] See, *e. g.*, *In re Everly*, 346 B. R. 791, 797 (Bkrtcy. App. Panel CA8 2006) (bankruptcy court's § 105 powers include authority to sanction counsel); *In re Brooks-Hamilton*, 329 B. R. 270 (Bkrtcy. App. Panel CA9 2005) (upholding sanction and suspension of debtor's counsel); *In re Washington*, 297 B. R. 662 (Bkrtcy. Ct. SD Fla. 2003).

[8] See, *e. g.*, *In re Deville*, 280 B. R. 483 (Bkrtcy. App. Panel CA9 2002); *In re Johnson*, 336 B. R. 568, 573 (Bkrtcy. Ct. SD Fla. 2006); *In re Couch-Russell*, No. 00–02226, 2003 WL 25273863 (Bkrtcy. Ct. Idaho, Apr. 2, 2003); *In re Gorshtein*, 285 B. R. 118 (Bkrtcy. Ct. SDNY 2002).

[9] See, *e. g.*, *In re Sekendur*, 334 B. R. 609 (Bkrtcy. Ct. ND Ill. 2005) (imposing contempt sanction for serial and vexatious bankruptcy filing); *In re Tolbert*, 258 B. R. 387 (Bkrtcy. Ct. WD Mo. 2001) (same); *In re Swanson*, 207 B. R. 76 (Bkrtcy. Ct. NJ 1997) (imposing civil contempt under § 105 for failure to vacate property).

Syllabus

WALLACE *v.* KATO ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 05–1240. Argued November 6, 2006—Decided February 21, 2007

In January 1994, Chicago police arrested petitioner, a minor, for murder. He was tried and convicted, but the charges were ultimately dropped in April 2002. In April 2003, he filed this suit under 42 U. S. C. § 1983 against the city and several of its officers, seeking damages for, *inter alia*, his unlawful arrest in violation of the Fourth Amendment. The District Court granted respondents summary judgment, and the Seventh Circuit affirmed, ruling that the § 1983 suit was time barred because petitioner's cause of action accrued at the time of his arrest, not when his conviction was later set aside.

Held: The statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process. Pp. 387–397.

(a) The statute of limitations in a § 1983 suit is that provided by the State for personal-injury torts, *e. g.*, *Owens* v. *Okure*, 488 U. S. 235, 249–250; here, two years under Illinois law. For false imprisonment and its subspecies false arrest, "[t]he . . . cause[s] of action . . . provid[ing] the closest analogy to claims of the type considered here," *Heck* v. *Humphrey*, 512 U. S. 477, 484, the statute of limitations begins to run when the alleged false imprisonment ends, see, *e. g.*, 4 Restatement (Second) of Torts § 899, Comment *c*, that is, in the present context, when the victim becomes held pursuant to legal process, see, *e. g.*, *Heck*, *supra*, at 484. Thus, petitioner's false imprisonment did not end, as he contends, when he was released from custody after the State dropped the charges against him, but rather when he appeared before the examining magistrate and was bound over for trial. Since more than two years elapsed between that date and the filing of this suit—even leaving out of the count the period before he reached his majority—the action was time barred. Pp. 387–392.

(b) Petitioner's contention that *Heck* compels the conclusion that his suit could not accrue until the State dropped its charges against him is rejected. The *Heck* Court held that "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sen-

Syllabus

tence has been [set aside]. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983." 512 U. S., at 486–487. Even assuming that the *Heck* deferred-accrual rule would be applied to the date petitioner was first held pursuant to legal process, there was in existence at that time no criminal conviction that the cause of action would impugn. What petitioner seeks is the adoption of a principle going well beyond *Heck:* that an action which would impugn *an anticipated future conviction* cannot be brought until that conviction occurs and is set aside. The impracticality of such a speculative rule is obvious.

The fact that § 1983 actions sometimes accrue before the setting aside of—indeed, even before the existence of—the related criminal conviction raises the question whether, assuming the *Heck* bar takes effect when the later conviction is obtained, the statute of limitations on the once valid cause of action is tolled as long as the *Heck* bar subsists. However, this Court generally refers to state-law tolling rules, *e. g., Hardin* v. *Straub*, 490 U. S. 536, 538–539, and is unaware of Illinois cases providing tolling in even remotely comparable circumstances. Moreover, a federal tolling rule to this effect would create a jurisprudential limbo in which it would not be known whether tolling is appropriate by reason of the *Heck* bar until it is established that the newly entered conviction would be impugned by the not-yet-filed, and thus utterly indeterminate, § 1983 claim. Pp. 392–397.

440 F. 3d 421, affirmed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment, in which SOUTER, J., joined, *post*, p. 397. BREYER, J., filed a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 400.

Kenneth N. Flaxman argued the cause for petitioner. With him on the briefs was *John J. Bursch*.

Benna Ruth Solomon, Deputy Corporation Counsel of the City of Chicago, argued the cause for respondents. With her on the brief were *Myriam Zreczny Kasper*, Chief Assistant Corporation Counsel, *Jane Elinor Notz*, Assistant Corporation Counsel, and *Lawrence Rosenthal*.*

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*Briefs of *amici curiae* urging affirmance were filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *Gary Feinerman*, Solicitor General, and *Michael Scodro*, Deputy Solicitor General, and

JUSTICE SCALIA delivered the opinion of the Court.

Petitioner filed suit under Rev. Stat. § 1979, 42 U. S. C. § 1983, seeking damages for an arrest that violated the Fourth Amendment. We decide whether his suit is timely.

I

On January 17, 1994, John Handy was shot to death in the city of Chicago. Sometime around 8 p.m. two days later, Chicago police officers located petitioner, then 15 years of age, and transported him to a police station for questioning. After interrogations that lasted into the early morning hours the next day, petitioner agreed to confess to Handy's murder. An assistant state's attorney prepared a statement to this effect, and petitioner signed it, at the same time waiving his *Miranda* rights.

Prior to trial in the Circuit Court of Cook County, petitioner unsuccessfully attempted to suppress his station house statements as the product of an unlawful arrest. He was convicted of first-degree murder and sentenced to 26 years in prison. On direct appeal, the Appellate Court of Illinois held that officers had arrested petitioner without probable cause, in violation of the Fourth Amendment. *People* v. *Wallace*, 299 Ill. App. 3d 9, 17–18, 701 N. E. 2d 87, 94 (1998). According to that court (whose determination we are not reviewing here), even assuming petitioner willingly accompanied police to the station, his presence there "esca-

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by the Attorneys General for their respective jurisdictions as follows: *Troy King* of Alabama, *Carl C. Danberg* of Delaware, *Robert J. Spagnoletti* of the District of Columbia, *Tom Miller* of Iowa, *Mike McGrath* of Montana, *Wayne Stenehjem* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Henry McMaster* of South Carolina, *Mark L. Shurtleff* of Utah, *Rob McKenna* of Washington, and *Peggy A. Lautenschlager* of Wisconsin; for Cook County, Illinois, by *Richard A. Devine*, *Patrick T. Driscoll, Jr.*, *Louis R. Hegeman*, *Paul Castiglione*, and *Veronica Calderon Malavia*; and for the National League of Cities et al. by *Richard Ruda* and *D. Bruce La Pierre*.

lated to an involuntary seizure prior to his formal arrest." *Id.*, at 18, 701 N. E. 2d, at 94. After another round of appeals, the Appellate Court concluded on August 31, 2001, that the effect of petitioner's illegal arrest had not been sufficiently attenuated to render his statements admissible, see *Brown* v. *Illinois*, 422 U. S. 590 (1975), and remanded for a new trial. Judgt. order reported *sub nom. People* v. *Wallace*, 324 Ill. App. 3d 1139, 805 N. E. 2d 756 (2001). On April 10, 2002, prosecutors dropped the charges against petitioner.

On April 2, 2003, petitioner filed this § 1983 suit against the city of Chicago and several Chicago police officers, seeking damages arising from, *inter alia*, his unlawful arrest.[1] The District Court granted summary judgment to respondents and the Court of Appeals affirmed. According to the Seventh Circuit, petitioner's § 1983 suit was time barred because his cause of action accrued at the time of his arrest, and not when his conviction was later set aside. *Wallace* v. *Chicago*, 440 F. 3d 421, 427 (2006). We granted certiorari, 547 U. S. 1205 (2006).

II

Section 1983 provides a federal cause of action, but in several respects relevant here federal law looks to the law of the State in which the cause of action arose. This is so for the length of the statute of limitations: It is that which the State provides for personal-injury torts. *Owens* v. *Okure*, 488 U. S. 235, 249–250 (1989); *Wilson* v. *Garcia*, 471 U. S. 261, 279–280 (1985). The parties agree that under Illinois law, this period is two years. Ill. Comp. Stat., ch. 735, § 5/13–202 (West 2003). Thus, if the statute on petitioner's cause of action began to run at the time of his unlawful arrest, or even at the time he was ordered held by a magistrate, his

[1] All of petitioner's other state and federal claims were resolved adversely to him and are not before us. We expressly limited our grant of certiorari to the Fourth Amendment false-arrest claim. See 547 U. S. 1205 (2006). The city of Chicago is no longer a party to this suit.

§ 1983 suit was plainly dilatory, even according him tolling for the two-plus years of his minority, see § 5/13–211. But if, as the dissenting judge argued below, the commencement date for running of the statute is governed by this Court's decision in *Heck* v. *Humphrey*, 512 U. S. 477 (1994), that date *may* be the date on which petitioner's conviction was vacated, in which case the § 1983 suit would have been timely filed.

While we have never stated so expressly, the accrual date of a § 1983 cause of action is a question of federal law that is *not* resolved by reference to state law. The parties agree, the Seventh Circuit in this case so held, see 440 F. 3d, at 424, and we are aware of no federal court of appeals holding to the contrary. Aspects of § 1983 which are not governed by reference to state law are governed by federal rules conforming in general to common-law tort principles. See *Heck*, *supra*, at 483; *Carey* v. *Piphus*, 435 U. S. 247, 257–258 (1978). Under those principles, it is "the standard rule that [accrual occurs] when the plaintiff has 'a complete and present cause of action,'" *Bay Area Laundry and Dry Cleaning Pension Trust Fund* v. *Ferbar Corp. of Cal.*, 522 U. S. 192, 201 (1997) (quoting *Rawlings* v. *Ray*, 312 U. S. 96, 98 (1941)), that is, when "the plaintiff can file suit and obtain relief," *Bay Area Laundry*, *supra*, at 201. There can be no dispute that petitioner could have filed suit as soon as the allegedly wrongful arrest occurred, subjecting him to the harm of involuntary detention, so the statute of limitations would normally commence to run from that date.

There is, however, a refinement to be considered, arising from the common law's distinctive treatment of the torts of false arrest and false imprisonment, "[t]he . . . cause[s] of action [that] provid[e] the closest analogy to claims of the type considered here," *Heck*, *supra*, at 484. See 1 D. Dobbs, Law of Torts § 47, p. 88 (2001). False arrest and false imprisonment overlap; the former is a species of the latter. "Every confinement of the person is an imprison-

ment, whether it be in a common prison or in a private house, or in the stocks, or even by forcibly detaining one in the public streets; and when a man is lawfully in a house, it is imprisonment to prevent him from leaving the room in which he is." M. Newell, Law of Malicious Prosecution, False Imprisonment, and Abuse of Legal Process §2, p. 57 (1892) (footnote omitted). See also 7 S. Speiser, C. Krause, & A. Gans, American Law of Torts §27:2, pp. 940–942 (1990). We shall thus refer to the two torts together as false imprisonment. That tort provides the proper analogy to the cause of action asserted against the present respondents for the following reason: The sort of unlawful detention remediable by the tort of false imprisonment is detention *without legal process*, see, *e. g.*, W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts §11, p. 54, §119, pp. 885–886 (5th ed. 1984); 7 Speiser, *supra*, §27:2, at 943–944, and the allegations before us arise from respondents' detention of petitioner *without legal process* in January 1994. They did not have a warrant for his arrest.

The running of the statute of limitations on false imprisonment is subject to a distinctive rule—dictated, perhaps, by the reality that the victim may not be able to sue while he is still imprisoned: "Limitations begin to run against an action for false imprisonment when the alleged false imprisonment ends." 2 H. Wood, Limitation of Actions §187d(4), p. 878 (rev. 4th ed. 1916); see also 4 Restatement (Second) of Torts §899, Comment *c* (1977); A. Underhill, Principles of Law of Torts 202 (1881). Thus, to determine the beginning of the limitations period in this case, we must determine when petitioner's false imprisonment came to an end.

Reflective of the fact that false imprisonment consists of detention without legal process, a false imprisonment ends once the victim becomes held *pursuant to such process*—when, for example, he is bound over by a magistrate or arraigned on charges. 1 Dobbs, *supra*, §39, at 74, n. 2; Keeton, *supra*, §119, at 888; H. Stephen, Actions for Malicious Prose-

cution 120–123 (1888). Thereafter, unlawful detention forms part of the damages for the "entirely distinct" tort of malicious prosecution, which remedies detention accompanied, not by absence of legal process, but by *wrongful institution* of legal process.[2] Keeton, *supra*, § 119, at 885–886; see 1 F. Harper, F. James, & O. Gray, Law of Torts § 3.9, p. 3:36 (3d ed. 1996); 7 Speiser, *supra*, § 27:2, at 943–945. "If there is a false arrest claim, damages for that claim cover the time of detention up until issuance of process or arraignment, but not more. From that point on, any damages recoverable must be based on a malicious prosecution claim and on the wrongful use of judicial process rather than detention itself." Keeton, *supra*, § 119, at 888; see also *Heck*, *supra*, at 484; 8 Speiser, *supra*, § 28:15, at 80. Thus, petitioner's contention that his false imprisonment ended upon his release from custody, after the State dropped the charges against him, must be rejected. It ended much earlier, when legal process was initiated against him, and the statute would have begun to run from that date, but for its tolling by reason of petitioner's minority.[3]

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[2] We have never explored the contours of a Fourth Amendment malicious-prosecution suit under § 1983, see *Albright* v. *Oliver*, 510 U. S. 266, 270–271, 275 (1994) (plurality opinion), and we do not do so here. See generally 1 M. Schwartz, Section 1983 Litigation § 3.18[C], pp. 3–605 to 3–629 (4th ed. 2004) (noting a range of approaches in the lower courts). Assuming without deciding that such a claim is cognizable under § 1983, petitioner has not made one. Petitioner did not include such a claim in his complaint. He in fact abandoned a state-law malicious-prosecution claim in the District Court, and stated, in his opposition to respondents' first motion for summary judgment, that "Plaintiff does not seek to raise . . . a malicious prosecution claim under § 1983," Record, Doc. 17, p. 3, n. 5. In this Court, he has told us that respondents are "mistaken in characterizing petitioner's cause of action as involving 'unwarranted prosecution.'" Reply Brief 12.

[3] This is not to say, of course, that petitioner could not have filed suit immediately upon his false arrest. While the statute of limitations did not begin to run until petitioner became detained pursuant to legal process, he was injured and suffered damages at the moment of his arrest,

Petitioner asserts that the date of his release from custody must be the relevant date in the circumstances of the present suit, since he is seeking damages up to that time. The theory of his complaint is that the initial Fourth Amendment violation set the wheels in motion for his subsequent conviction and detention: The unlawful arrest led to the coerced confession, which was introduced at his trial, producing his conviction and incarceration. As we have just explained, at common law damages for detention after issuance of process or arraignment would be attributable to a tort other than the unlawful arrest alleged in petitioner's complaint—and probably a tort chargeable to defendants other than the respondents here. Even assuming, however, that all damages for detention pursuant to legal process could be regarded as consequential damages attributable to the unlawful arrest, that would not alter the commencement date for the statute of limitations. "Under the traditional rule of accrual . . . the tort cause of action accrues, and the statute of limitations commences to run, when the wrongful act or omission results in damages. The cause of action accrues even though the full extent of the injury is not then known or predictable." 1 C. Corman, Limitation of Actions § 7.4.1, pp. 526–527 (1991) (footnote omitted); see also 54 C. J. S., Limitations of Actions § 112, p. 150 (2005). Were it otherwise, the statute would begin to run only after a plaintiff became satisfied that he had been harmed enough, placing the supposed statute of repose in the sole hands of the party seeking relief.

We conclude that the statute of limitations on petitioner's § 1983 claim commenced to run when he appeared before the examining magistrate and was bound over for trial. Since more than two years elapsed between that date and the filing

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and was entitled to bring suit at that time. See *Adler* v. *Beverly Hills Hospital*, 594 S. W. 2d 153, 156 (Tex. Civ. App. 1980) ("We may concede that a person falsely imprisoned has the right to sue on the first day for his detention").

of this suit—even leaving out of the count the period before he reached his majority—the action was time barred.

III

This would end the matter, were it not for petitioner's contention that *Heck* v. *Humphrey*, 512 U. S., at 477, compels the conclusion that his suit could not accrue until the State dropped its charges against him. In *Heck*, a state prisoner filed suit under § 1983 raising claims which, if true, would have established the invalidity of his outstanding conviction. We analogized his suit to one for malicious prosecution, an element of which is the favorable termination of criminal proceedings. *Id.*, at 484. We said:

> "[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U. S. C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983." *Id.*, at 486–487 (footnote omitted).

We rested this conclusion upon "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments." *Id.*, at 486. "'Congress,'" we said, "'has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, and that specific determination must override the general terms of § 1983.'" *Id.*, at 482 (quoting *Preiser* v. *Rodriguez*, 411 U. S. 475, 490 (1973)).

As the above excerpts show, the *Heck* rule for deferred accrual is called into play only when there exists "a conviction or sentence that has *not* been . . . invalidated," that is to say, an "outstanding criminal judgment." It delays what would otherwise be the accrual date of a tort action until the setting aside *of an extant conviction* which success in that tort action would impugn. We assume that, for purposes of the present tort action, the *Heck* principle would be applied not to the date of accrual but to the date on which the statute of limitations began to run, that is, the date petitioner became held pursuant to legal process. See *supra*, at 389–390. Even at that later time, there was in existence no criminal conviction that the cause of action would impugn; indeed, there may not even have been an indictment.

What petitioner seeks, in other words, is the adoption of a principle that goes well beyond *Heck:* that an action which would impugn *an anticipated future conviction* cannot be brought until that conviction occurs and is set aside. The impracticality of such a rule should be obvious. In an action for false arrest it would require the plaintiff (and if he brings suit promptly, the court) to speculate about whether a prosecution will be brought, whether it will result in conviction, and whether the pending civil action will impugn that verdict, see *Heck*, 512 U. S., at 487, n. 7—all this at a time when it can hardly be known what evidence the prosecution has in its possession. And what if the plaintiff (or the court) guesses wrong, and the anticipated future conviction never occurs, because of acquittal or dismissal? Does that event (instead of the *Heck*-required setting aside of the extant conviction) trigger accrual of the cause of action? Or what if prosecution never occurs—what will the trigger be then?

We are not disposed to embrace this bizarre extension of *Heck*. If a plaintiff files a false-arrest claim before he has been convicted (or files any other claim related to rulings that will likely be made in a pending or anticipated criminal trial), it is within the power of the district court, and in ac-

cord with common practice, to stay the civil action until the criminal case or the likelihood of a criminal case is ended. See *id.*, at 487–488, n. 8 (noting that "abstention may be an appropriate response to the parallel state-court proceedings"); *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 730 (1996). If the plaintiff is ultimately convicted, and if the stayed civil suit would impugn that conviction, *Heck* will require dismissal; otherwise, the civil action will proceed, absent some other bar to suit. *Edwards* v. *Balisok*, 520 U. S. 641, 649 (1997); *Heck*, 512 U. S., at 487.

There is, however, one complication that we must address here. It arises from the fact that § 1983 actions, unlike the tort of malicious prosecution which *Heck* took as its model, see *id.*, at 484, sometimes accrue before the setting aside of—indeed, even before the existence of—the related criminal conviction. That of course is the case here, and it raises the question whether, assuming that the *Heck* bar takes effect when the later conviction is obtained, the statute of limitations on the once valid cause of action is tolled as long as the *Heck* bar subsists. In the context of the present case: If petitioner's conviction on April 19, 1996, caused the statute of limitations on his (possibly) impugning but yet-to-be-filed cause of action to be tolled until that conviction was set aside, his filing here would have been timely.

We have generally referred to state law for tolling rules, just as we have for the length of statutes of limitations. *Hardin* v. *Straub*, 490 U. S. 536, 538–539 (1989); *Board of Regents of Univ. of State of N. Y.* v. *Tomanio*, 446 U. S. 478, 484–486 (1980). Petitioner has not brought to our attention, nor are we aware of, Illinois cases providing tolling in even remotely comparable circumstances. (Indeed, petitioner did not even argue for such tolling below, though he supported its suggestion at oral argument.) Nor would we be inclined to adopt a federal tolling rule to this effect. Under such a regime, it would not be known whether tolling is appropriate by reason of the *Heck* bar until it is established that the

newly entered conviction would be impugned by the not-yet-filed, and thus utterly indeterminate, § 1983 claim.[4] It would hardly be desirable to place the question of tolling *vel non* in this jurisprudential limbo, leaving it to be determined by those later events, and then pronouncing it retroactively. Defendants need to be on notice to preserve beyond the normal limitations period evidence that will be needed for their defense; and a statute that becomes retroactively extended, by the action of the plaintiff in crafting a conviction-impugning cause of action, is hardly a statute of repose.[5]

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[4] Had petitioner filed suit upon his arrest and had his suit then been dismissed under *Heck*, the statute of limitations, absent tolling, would have run by the time he obtained reversal of his conviction. If under those circumstances he were not allowed to refile his suit, *Heck* would produce immunity from § 1983 liability, a result surely not intended. Because in the present case petitioner did not file his suit within the limitations period, we need not decide, had he done so, how much time he would have had to refile the suit once the *Heck* bar was removed.

[5] JUSTICE STEVENS reaches the same result by arguing that, under *Stone* v. *Powell*, 428 U. S. 465 (1976), the *Heck* bar can never come into play in a § 1983 suit seeking damages for a Fourth Amendment violation, so that "a habeas remedy was never available to [petitioner] in the first place." *Post*, at 399 (opinion concurring in judgment). This reads *Stone* to say more than it does. Under *Stone*, Fourth Amendment violations are *generally* not cognizable on federal habeas, but they *are* cognizable when the State has failed to provide the habeas petitioner "an opportunity for full and fair litigation of a Fourth Amendment claim." 428 U. S., at 482. Federal habeas petitioners have sometimes succeeded in arguing that *Stone*'s general prohibition does not apply. See, *e. g.*, *Herrera* v. *LeMaster*, 225 F. 3d 1176, 1178 (2000), aff'd on this point, 301 F. 3d 1192, 1195, n. 4 (CA10 2002) (en banc); *United States ex rel. Bostick* v. *Peters*, 3 F. 3d 1023, 1029 (CA7 1993); *Agee* v. *White*, 809 F. 2d 1487, 1490 (CA11 1987); *Doescher* v. *Estelle*, 666 F. 2d 285, 287 (CA5 1982); *Boyd* v. *Mintz*, 631 F. 2d 247, 250–251 (CA3 1980); see also 2 R. Hertz & J. Liebman, Federal Habeas Corpus Practice and Procedure §§ 27.1–27.3, pp. 1373–1389 (5th ed. 2005). At the time of a Fourth Amendment wrong, and at the time of conviction, it cannot be known whether a prospective § 1983 plaintiff will receive a full and fair opportunity to litigate his Fourth Amendment claim. It thus remains the case that a conflict with the federal ha-

JUSTICE BREYER argues in dissent that equitable tolling should apply "so long as the issues that [a § 1983] claim would raise are being pursued in state court." *Post*, at 403. We know of no support (nor does the dissent suggest any) for the far-reaching proposition that equitable tolling is appropriate to avoid the risk of concurrent litigation. As best we can tell, the only rationale for such a rule is the concern that "petitioner would have had to divide his attention between criminal and civil cases." *Post*, at 400. But when has it been the law that a criminal defendant, or a potential criminal defendant, is absolved from all other responsibilities that the law would otherwise place upon him? If a defendant has a breach-of-contract claim against the prime contractor for his new home, is he entitled to tolling for that as well while his criminal case is pending? Equitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs. Besides its never-heard-of-before quality, the dissent's proposal suffers from a more ironic flaw. Although the dissent criticizes us for having to develop a system of stays and dismissals, it should be obvious that the omnibus tolling solution will require the same. Despite the existence of the new tolling rule, some (if not most) plaintiffs will nevertheless file suit before or during state criminal proceedings. How does the dissent propose to handle such suits? Finally, the dissent's

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beas statute is possible, that a Fourth Amendment claim can necessarily imply the invalidity of a conviction, and that if it does it must, under *Heck*, be dismissed.

Insofar as JUSTICE STEVENS simply suggests that *Heck* has no bearing here because *petitioner* received a full and fair opportunity to litigate his Fourth Amendment claim in state court, the argument is equally untenable. At the time that petitioner became detained pursuant to legal process, it was impossible to predict whether this would be true. And even at the point when his limitations period ended, state proceedings on his conviction were ongoing; full and fair opportunity up to that point was not enough. *Stone* requires full and fair opportunity to litigate a Fourth Amendment claim "at trial *and on direct review*." 428 U. S., at 494–495, n. 37 (emphasis added).

contention that law enforcement officers would prefer the possibility of a later § 1983 suit to the more likely reality of an immediate filing, *post*, at 403–404, is both implausible and contradicted by those who know best. As no fewer than 11 States have informed us in this litigation, "States and municipalities have a strong interest in timely notice of alleged misconduct by their agents." Brief for State of Illinois et al. as *Amici Curiae* 18.

* * *

We hold that the statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process. Since in the present case this occurred (with appropriate tolling for the plaintiff's minority) more than two years before the complaint was filed, the suit was out of time. The judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE SOUTER joins, concurring in the judgment.

While I do not disagree with the Court's conclusion, I reach it by a more direct route. The alleged Fourth Amendment violation at issue in this case had two distinct consequences for petitioner: First, it provided him with a federal cause of action for damages under Rev. Stat. §1979, 42 U. S. C. § 1983, and second, it provided him with an objection to the admissibility of certain evidence in his state criminal trial. The crux of petitioner's argument before this Court is that *Heck* v. *Humphrey*, 512 U. S. 477 (1994), provides the appropriate rule of accrual for his § 1983 claim. As both he and the majority note, *Heck* held:

> "[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a

> conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U. S. C. § 2254. . . . Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.*, at 486–487 (footnote omitted).

Relying on this principle, petitioner contends that his federal cause of action did not accrue until after the criminal charges against him were dropped.

Unlike the majority, my analysis would not depend on any common-law tort analogies.[1] Instead, I would begin where all nine Justices began in *Heck*. That case, we unanimously agreed, required the Court to reconcile § 1983 with the federal habeas corpus statute.[2] In concluding that Heck's dam-

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[1] See *Heck*, 512 U. S., at 492 (SOUTER, J., concurring in judgment) ("Common-law tort rules can provide a 'starting point for the inquiry under § 1983,' *Carey* v. *Piphus*, 435 U. S. 247, 258 (1978), but . . . [a]t the same time, we have consistently refused to allow common-law analogies to displace statutory analysis, declining to import even well-settled common-law rules into § 1983 'if [the statute's] history or purpose counsel against applying [such rules] in § 1983 actions.' *Wyatt* v. *Cole*, 504 U. S. 158, 164 (1992)" (brackets in original)).

[2] See *id.*, at 480 ("This case lies at the intersection of the two most fertile sources of federal-court prisoner litigation—the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U. S. C. § 1983, and the federal habeas corpus statute, 28 U. S. C. § 2254"); *id.*, at 491 (SOUTER, J., concurring in judgment) ("The Court begins its analysis as I would, by observing that 'this case lies at the intersection of the two most fertile sources of federal-court prisoner litigation—the Civil Rights Act of 1871, . . . 42 U. S. C. § 1983, and the federal habeas corpus statute, 28 U. S. C. § 2254'"); *id.*, at 490 (THOMAS, J., concurring) ("The Court and JUSTICE SOUTER correctly

ages claim was not cognizable under § 1983, we found that the writ of habeas corpus, and not § 1983, affords the "'appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement.'" *Id.*, at 482 (quoting *Preiser* v. *Rodriguez*, 411 U. S. 475, 490 (1973)). Given our holding in *Stone* v. *Powell*, 428 U. S. 465, 481–482 (1976), however, that writ cannot provide a remedy for this petitioner. And because a habeas remedy was never available to him in the first place, *Heck* cannot postpone the accrual of petitioner's § 1983 Fourth Amendment claim.[3] So while it may well be appropriate to stay the trial of claims of this kind until after the completion of state proceedings, see, *e. g.*, *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 731 (1996); cf. *Younger* v. *Harris*, 401 U. S. 37 (1971), I am aware of no legal basis for holding that the cause of action has not accrued once the Fourth Amendment violation has been completed.

The Court regrettably lets the perfect become the enemy of the good. It eschews my reasoning because "[f]ederal habeas petitioners have *sometimes* succeeded in arguing that *Stone*'s general prohibition does not apply." *Ante*, at 395, n. 5 (emphasis added). However, in the vast run of cases, a State will provide a habeas petitioner with "an opportunity for full and fair litigation of a Fourth Amendment claim,"

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begin their analyses with the realization that 'this case lies at the intersection of . . . the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U. S. C. § 1983, and the federal habeas corpus statute, 28 U. S. C. § 2254' ").

[3] See *Spencer* v. *Kemna*, 523 U. S. 1, 21 (1998) (SOUTER, J., joined by O'Connor, GINSBURG, and BREYER, JJ., concurring) (concluding that a plaintiff may bring § 1983 claim if he could not bring the same claim under the habeas statute); *ibid.* (GINSBURG, J., concurring) ("I have come to agree with JUSTICE SOUTER's reasoning: Individuals without recourse to the habeas statute because they are not 'in custody' . . . fit within § 1983's 'broad reach' "); *id.*, at 25, n. 8 (STEVENS, J., dissenting) ("Given the Court's holding that petitioner does not have a remedy under the habeas statute, it is perfectly clear, as JUSTICE SOUTER explains, that he may bring an action under 42 U. S. C. § 1983").

Stone, 428 U. S., at 482, and *Heck* will not apply. It is always possible to find aberrant examples in the law, but we should not craft rules for the needle rather than the haystack in an area like this.

JUSTICE BREYER, with whom JUSTICE GINSBURG joins, dissenting.

I agree with the Court that the accrual date of a 42 U. S. C. § 1983 claim is not postponed by the presence of a possible bar to suit under *Heck* v. *Humphrey*, 512 U. S. 477 (1994). I also agree with the rest of the Court and with JUSTICE STEVENS that had petitioner timely filed his § 1983 case, the Federal District Court might have found it appropriate to stay the trial of his claims until the completion of state proceedings. *E. g.*, *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 731 (1996). In the absence of a stay, a litigant like petitioner would have had to divide his attention between criminal and civil cases with attendant risks of loss of time and energy as well as of inconsistent findings.

The Court's holding, however, simply leads to the question of what is to happen when, for example, the possibility of a *Heck* problem prevents the court from considering the merits of a § 1983 claim. And I disagree with the Court's insistence upon a rule of law that would require immediate filing, followed by an uncertain system of stays, dismissals, and possible refiling. *Ante*, at 395, n. 4 (majority opinion); *ante*, at 399 (STEVENS, J., concurring in judgment). I disagree because there is a well-established legal tool better able to deal with the problems presented by this type of suit.

Where a "plaintiff because of disability, irremediable lack of information, or other circumstances beyond his control just cannot reasonably be expected to sue in time," courts have applied a doctrine of "equitable tolling." *Miller* v. *Runyon*, 77 F. 3d 189, 191 (CA7 1996) (Posner, C. J.). The doctrine tolls the running of the limitations period until the disabling circumstance can be overcome. (This is why the

limitations period does not run against a falsely arrested person until his false imprisonment ends. His action has certainly accrued because, as the majority recognizes, he can file his claim immediately if he is able to do so. *Ante*, at 389, 390–391, n. 3.) 77 F. 3d, at 191; see also *Cada* v. *Baxter Healthcare Corp.*, 920 F. 2d 446, 450–453 (CA7 1990).

In particular, equitable tolling could apply where a § 1983 plaintiff reasonably claims that the unlawful behavior of which he complains was, or will be, necessary to a criminal conviction. It could toll the running of the limitations period: (1) from the time charges are brought until the time they are dismissed or the defendant is acquitted or convicted, and (2) thereafter during any period in which the criminal defendant challenges a conviction (on direct appeal, on state collateral challenge, or on federal habeas) and reasonably asserts the behavior underlying the § 1983 action as a ground for overturning the conviction.

I find it difficult to understand why the Court rejects the use of "equitable tolling" in regard to typical § 1983 plaintiffs. *Ante*, at 394. The Court's alternative—file all § 1983 claims (including potentially *Heck*-barred claims) at once and then seek stays or be subject to dismissal and refiling—suffers serious practical disadvantages. For one thing, that approach would force all potential criminal defendants to file all potential § 1983 actions soon lest they lose those claims due to protracted criminal proceedings. For another, it would often require a federal court, seeking to determine whether to dismiss an action as *Heck* barred or to grant a stay, to consider issues likely being litigated in the criminal proceeding (Was the Constitution violated? Was the violation-related evidence necessary for conviction?). The federal court's decision as to whether a claim was *Heck* barred (say, whether the alleged constitutional violation was central to the state criminal conviction) might later bind a state court on conviction review. Because of this, even a claim without a likely *Heck* bar might linger on a federal

docket because the federal court (or the plaintiff who has been forced to early file) wishes to avoid interfering with any state proceedings and therefore must postpone reaching, not only the merits of the § 1983 claim, but the threshold *Heck* inquiry as well.

Principles of equitable tolling avoid these difficulties. Since equitable tolling obviates the need for immediate filing, it permits the criminal proceedings to winnow the constitutional wheat from chaff, and thereby increase the likelihood that the constitutionally meritless claims will never (in a § 1983 action) see the light of day. See *Allen* v. *McCurry*, 449 U. S. 90, 95–96 (1980) (federal court gives preclusive effect to constitutional determinations as to issues already litigated in state court). Moreover, an appropriate equitable tolling principle would apply not only to state criminal proceedings as here, but also to state appellate proceedings, state collateral attacks, and federal *habeas* proceedings.

Of course, § 1983 ordinarily borrows its limitations principles from state law. 42 U. S. C. § 1988(a). And I do not know whether or which States have comparable equitable tolling principles in place. If a given state court lacks the necessary tolling provision, however, § 1983, in my view, permits the federal courts to devise and impose such principles. See *Hardin* v. *Straub*, 490 U. S. 536, 538–540 (1989) ("[G]aps in federal civil rights acts should be filled by state law, as long as that law is not inconsistent with federal law" and its "chief goals of compensation and deterrence or its subsidiary goals of uniformity and federalism" (footnote omitted)); *Heck* v. *Humphrey*, 997 F. 2d 355, 358 (CA7 1993) (Posner, J.) (articulating why federal tolling regime may apply to § 1983 claims), aff'd on other grounds, 512 U. S., at 489. Cf. *Board of Regents of Univ. of State of N. Y.* v. *Tomanio*, 446 U. S. 478, 490 (1980).

The use of equitable tolling in cases of potential temporal conflict between civil § 1983 and related criminal proceedings is consistent with, indeed, it would further, § 1983's basic pur-

poses. It would provide for orderly adjudication, minimize the risk of inconsistent legal determinations, avoid clogging the courts with potentially unnecessary "protective" filings, and, above all, assure a plaintiff who possesses a meritorious § 1983 claim that his pursuit of criminal remedies designed to free him from unlawful confinement will not compromise his later ability to obtain civil § 1983 redress as well.

The Court is wrong in concluding that the principle I have described would "place" the tolling "question" in "jurisprudential limbo." *Ante*, at 395. Under the approach I propose, *supra*, at 401, a potential § 1983 plaintiff knows his claim is being tolled so long as the issues that claim would raise are being pursued in state court. Such a rule is prophylactic (it will sometimes toll claims that would not be barred by *Heck*), but under such an approach neither the plaintiff, nor the defendant, nor the federal court need speculate as to whether the claims are in any way barred until the state court has had the opportunity to consider the claims in the criminal context.

A tolling principle certainly seems to me to create greater order than the rule the majority sets out, whereby all criminal defendants must file their § 1983 suits immediately, some will be stayed, some dismissed, and then some may be refiled and entitled to tolling, *ante*, at 395, n. 4. The majority acknowledges that tolling may be necessary to protect the plaintiff who previously filed and was dismissed. *Ibid.* Why not simply apply that tolling principle across the board?

The majority is also wrong when it suggests that the proposed equitable tolling rule would create a significant problem of lack of notice. *Ante*, at 396–397. Because the rule would toll only while the potential § 1983 plaintiff is challenging the alleged misconduct in a state court, the State itself would have notice of the plaintiff's claims. For similar reasons, the potential individual § 1983 defendants, the state officers, would also likely have notice of the charge. But even if they do not, I believe that many would prefer to forgo

immediate notice, for it comes with a pricetag attached—the price consists of being immediately sued by the filing of a § 1983 lawsuit, rife with stays and delays, which otherwise, in the course of time (as claims are winnowed in state court) might never have been filed.

The Court's suggested limitations system, like an equitable tolling rule, will produce some instances in which a plaintiff will file a § 1983 lawsuit at an initially uncertain future date. *Ante*, at 395, n. 4. And, under both approaches, in the many § 1983 suits that do not involve any *Heck* bar, a defendant can and will file immediately and his suit would proceed (for there is no tolling unless the potential § 1983 plaintiff is asserting in a conviction challenge that a constitutional violation did impugn his conviction). My problem with the Court's approach lies in its insistence that all potential plaintiffs (including those whose suits may be *Heck* barred) file immediately—even though their suits cannot then proceed. With tolling, only rarely would a plaintiff choose to file a potentially *Heck*-barred § 1983 suit while his criminal case is pending; and in those cases the district court could, if it wished, stay the action, or simply dismiss the suit without prejudice, secure in the knowledge that the suit could be timely filed at a later date.

The Court's refusal to admit the equitable tolling possibility means that large numbers of defendants will be sued immediately by all potential § 1983 plaintiffs with arguable *Heck* issues, no matter how meritless the claims; these suits may be endlessly stayed or dismissed and then, at some point in the future, some defendants will also be sued again. With equitable tolling, however, defendants will be sued once, in suits with constitutional claims that a state court has not already found meritless, at a time when the suit can be promptly litigated. Given the practical difficulties of the Court's approach, I would not rule out now, in advance, the use of an equitable tolling rule along the lines I have described.

Because this matter has not been fully argued, I would vacate the Seventh Circuit's determination and remand for consideration of the issues I here raise. For these reasons, I respectfully dissent.

Syllabus

WHORTON, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS *v.* BOCKTING

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 05–595. Argued November 1, 2006—Decided February 28, 2007

At respondent's trial for sexual assault on his 6-year-old stepdaughter, the court determined that the child was too distressed to testify and allowed respondent's wife and a police detective to recount her out-of-court statements about the assaults, as permitted by Nevada law, rejecting respondent's claim that admitting this testimony would violate the Confrontation Clause. He was convicted and sentenced to prison. On direct appeal, the Nevada Supreme Court found the child's statements constitutional under *Ohio* v. *Roberts*, 448 U. S. 56, then this Court's governing precedent, which had held that the Confrontation Clause permitted the admission of a hearsay statement made by a declarant unavailable to testify if the statement bore sufficient indicia of reliability, *id.*, at 66. Respondent renewed his Confrontation Clause claim in a subsequent federal habeas petition, which the District Court denied. While his appeal was pending in the Ninth Circuit, this Court overruled *Roberts* in *Crawford* v. *Washington*, 541 U. S. 36, holding that "testimonial statements of witnesses absent from trial" are admissible "only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine [the witness]," *id.*, at 59, and concluding that *Roberts*' interpretation of the Confrontation Clause was unsound, 541 U. S., at 60. Respondent contended that had *Crawford* been applied to his case, the child's statements would not have been admitted, and that it should have been applied because it was either an old rule in existence at the time of his conviction or a "'watershed rul[e] of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding," *Saffle* v. *Parks*, 494 U. S. 484, 495 (quoting *Teague* v. *Lane*, 489 U. S. 288, 311 (plurality opinion)). The Ninth Circuit reversed, holding that *Crawford* was a new rule, but a watershed rule that applies retroactively to cases on collateral review.

Held: Crawford announced a new rule of criminal procedure that does not fall within the *Teague* exception for watershed rules. Pp. 416–421.

(a) Under *Teague*'s framework, an old rule applies both on direct and collateral review, but a new rule generally applies only to cases still on direct review and applies retroactively in a collateral proceeding only if

it (1) is substantive or (2) is a watershed rule that implicates "the fundamental fairness and accuracy of the criminal proceeding." Respondent's conviction became final on direct appeal well before *Crawford* was decided, and *Crawford* announced a new rule, *i. e.*, "a rule that . . . was not '*dictated* by precedent existing at the time the defendant's conviction became final,'" *Saffle*, *supra*, at 488. It is flatly inconsistent with *Roberts*, which it overruled. "The explicit overruling of an earlier holding no doubt creates a new rule." *Saffle*, *supra*, at 488. Prior to *Crawford*, "reasonable jurists," *Graham* v. *Collins*, 506 U. S. 461, 467, could have concluded that *Roberts* governed the admission of testimonial hearsay statements made by an unavailable declarant. Pp. 416–417.

(b) Because *Crawford* announced a new rule and because that rule is procedural and not substantive, it cannot be applied here unless it is a "watershed rul[e]" that implicates "the fundamental fairness and accuracy of the criminal proceeding." This exception is "extremely narrow," *Schriro* v. *Summerlin*, 542 U. S. 348, 351, and since *Teague*, this Court has rejected every claim that a new rule has satisfied the requirements necessary to qualify as a watershed. The *Crawford* rule does not meet those two requirements. Pp. 417–421.

(1) First, the rule does not implicate "the fundamental fairness and accuracy of the criminal proceeding" because it is not necessary to prevent "an '"impermissibly large risk"'" of an inaccurate conviction, *Summerlin*, *supra*, at 356. *Gideon* v. *Wainwright*, 372 U. S. 335, the only case that this Court has identified as qualifying under this exception, provides guidance. There, the Court held that counsel must be appointed for an indigent defendant charged with a felony because, when such a defendant is denied representation, the risk of an unreliable verdict is intolerably high. The *Crawford* rule is not comparable to the *Gideon* rule. It is much more limited in scope, and its relationship to the accuracy of the factfinding process is far less direct and profound. *Crawford* overruled *Roberts* because *Roberts* was inconsistent with the original understanding of the Confrontation Clause, not because the *Crawford* rule's overall effect would be to improve the accuracy of factfinding in criminal trials. With respect to *testimonial* out-of-court statements, *Crawford* is more restrictive than *Roberts*, which may improve the accuracy of factfinding in some criminal cases. But whatever improvement in reliability *Crawford* produced must be considered together with *Crawford*'s elimination of Confrontation Clause protection against the admission of unreliable out-of-court nontestimonial statements. It is thus unclear whether *Crawford* decreased or increased the number of unreliable out-of-court statements that may be admitted in

criminal trials. But the question here is not whether *Crawford* resulted in some net improvement in the accuracy of factfinding in criminal cases, but, as the dissent below noted, whether testimony admissible under *Roberts* is so much more unreliable that, without the *Crawford* rule, "'the likelihood of an accurate conviction is seriously diminished,'" *Summerlin*, *supra*, at 352. *Crawford* did not effect a change of this magnitude. Pp. 418–420.

(2) Second, the *Crawford* rule did not "alter [this Court's] understanding of the *bedrock procedural elements* essential to the fairness of a proceeding," *Sawyer* v. *Smith*, 497 U. S. 227, 242. The Court has "not hesitated to hold that less sweeping and fundamental rules" than *Gideon*'s do not qualify. *Beard* v. *Banks*, 542 U. S. 406, 418. The *Crawford* rule, while certainly important, is not in the same category with *Gideon*, which effected a profound and "'sweeping'" change. *Beard*, *supra*, at 418. Pp. 420–421.

399 F. 3d 1010 and 408 F. 3d 1127, reversed and remanded.

ALITO, J., delivered the opinion for a unanimous Court.

George J. Chanos, Attorney General of Nevada, argued the cause for petitioner. With him on the briefs were *Gerald Gardner*, Chief Deputy Attorney General, and *Victor-Hugo Schulze II* and *Rene L. Hulse*, Senior Deputy Attorneys General.

Irving L. Gornstein argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Fisher*, *Deputy Solicitor General Dreeben*, and *Kathleen A. Felton*.

Frances A. Forsman argued the cause for respondent. With her on the brief was *Michael Pescetta*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *R. Ted Cruz*, Solicitor General, *Kristofer S. Monson*, Assistant Solicitor General, and *Fredericka Sargent*, Assistant Attorney General, by *Bill Lockyer*, Attorney General of California, and *Brian Means*, Supervising Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *David W. Márquez* of Alaska, *Terry Goddard* of Arizona, *John W. Suthers* of Colorado, *Richard Blumenthal* of Connecticut, *Carl C. Danberg* of Delaware, *Thurbert E. Baker* of Georgia, *Mark Bennett* of

JUSTICE ALITO delivered the opinion of the Court.

This case presents the question whether, under the rules set out in *Teague* v. *Lane*, 489 U. S. 288 (1989), our decision in *Crawford* v. *Washington*, 541 U. S. 36 (2004), is retroactive to cases already final on direct review. We hold that it is not.

I

A

Respondent Marvin Bockting lived in Las Vegas, Nevada, with his wife, Laura Bockting, their 3-year-old daughter Honesty, and Laura's 6-year-old daughter from a previous relationship, Autumn. One night, while respondent was at work, Autumn awoke from a dream crying, but she refused to tell her mother what was wrong, explaining: "'[D]addy said you would make him leave and that he would beat my butt if I told you.'" App. 119. After her mother reassured her, Autumn said that respondent had frequently forced her

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Hawaii, *Lawrence Wasden* of Idaho, *Lisa Madigan* of Illinois, *Steve Carter* of Indiana, *Tom Miller* of Iowa, *Phill Kline* of Kansas, *Gregory D. Stumbo* of Kentucky, *Charles C. Foti, Jr.*, of Louisiana, *J. Joseph Curran, Jr.*, of Maryland, *Tom Reilly* of Massachusetts, *Mike Cox* of Michigan, *Jim Hood* of Mississippi, *Mike McGrath* of Montana, *Jon Bruning* of Nebraska, *Kelly A. Ayotte* of New Hampshire, *Patricia A. Madrid* of New Mexico, *Jim Petro* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Tom Corbett* of Pennsylvania, *Patrick C. Lynch* of Rhode Island, *Larry Long* of South Dakota, *Paul G. Summers* of Tennessee, *Mark Shurtleff* of Utah, *Bob McDonnell* of Virginia, *Rob McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, *Peggy A. Lautenschlager* of Wisconsin, and *Patrick J. Crank* of Wyoming; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger*.

A brief of *amicus curiae* urging affirmance was filed for the National Association of Criminal Defense Lawyers by *Jeffrey T. Green* and *Marianne T. Caulfield*.

A brief of *amici curiae* was filed for former District Judge Edward N. Cahn et al. by *Timothy P. O'Toole*, *Catharine F. Easterly*, and former Judges *John J. Gibbons*, *Timothy K. Lewis*, *H. Curtis Meanor*, *Stephen M. Orlofsky*, and *Patricia M. Wald*, all *pro se*.

to engage in numerous and varied sexual acts with him. *Ibid.*

The next day, Laura Bockting confronted respondent and asked him to leave the house. He did so but denied any wrongdoing. Two days later, Laura called a rape crisis hotline and brought Autumn to the hospital for an examination. At the hospital, Detective Charles Zinovitch from the Las Vegas Metropolitan Police Department Sexual Assault Unit attempted to interview Autumn but found her too distressed to discuss the assaults. Detective Zinovitch then ordered a rape examination, which revealed strong physical evidence of sexual assaults. See Findings of Fact and Conclusions of Law and Order in *Nevada* v. *Bockting*, Case No. C–83110 (D. Nev., Sept. 5, 1994), App. 47, 119.

Two days later, Detective Zinovitch interviewed Autumn in the presence of her mother, and at that time, Autumn provided a detailed description of acts of sexual assault carried out by respondent; Autumn also demonstrated those acts using anatomically correct dolls. *Id.*, at 47–48; 119. Respondent was then arrested, and a state grand jury indicted him on four counts of sexual assault on a minor under 14 years of age.

At respondent's preliminary hearing, Autumn testified that she understood the difference between a truth and a lie, but she became upset when asked about the assaults. Although she initially agreed that respondent had touched her in a way that "[she] didn't think he was supposed to touch [her]," *id.*, at 14, she later stated that she could not remember how respondent had touched her or what she had told her mother or the detective, *id.*, at 19–21. The trial court, however, found the testimony of Laura Bockting and Detective Zinovitch to be sufficient to hold respondent for trial.

At trial, the court held a hearing outside the presence of the jury to determine whether Autumn could testify. After it became apparent that Autumn was too distressed to be sworn in, *id.*, at 25–26, the State moved under Nev. Rev.

Stat. § 51.385 (2003)[1] to allow Laura Bockting and Detective Zinovitch to recount Autumn's statements regarding the sexual assaults. App. 25–27. Under the Nevada statute, out-of-court statements made by a child under 10 years of age describing acts of sexual assault or physical abuse of the child may be admitted if the court finds that the child is unavailable or unable to testify and that "the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness." § 51.385(1)(a). Over defense counsel's objection that admission of this testimony would violate the Confrontation Clause, *id.*, at 27–28, the trial court found sufficient evidence of reliability to satisfy § 51.385.

As a result of this ruling, Laura Bockting and Detective Zinovitch were permitted at trial to recount Autumn's out-of-court statements about the assaults. Laura Bockting also testified that respondent was the only male who had had the opportunity to assault Autumn. In addition, the prosecution introduced evidence regarding Autumn's medical exam. Respondent testified in his own defense and denied the assaults, and the defense brought out the fact that Au-

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[1] Section 51.385 provides, in relevant part:

"1. [A] statement made by a child under the age of 10 years describing any act of sexual conduct performed with or on the child or any act of physical abuse of the child is admissible in a criminal proceeding regarding that act of sexual conduct or physical abuse if:

"(a) The court finds, in a hearing out of the presence of the jury, that the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness; and

"(b) The child testifies at the proceeding or is unavailable or unable to testify.

"2. In determining the trustworthiness of a statement, the court shall consider, without limitation, whether:

"(a) The statement was spontaneous;

"(b) The child was subjected to repetitive questioning;

"(c) The child had a motive to fabricate;

"(d) The child used terminology unexpected of a child of similar age; and

"(e) The child was in a stable mental state."

tumn, unlike many children her age, had acquired some knowledge about sexual acts, since she had seen respondent and her mother engaging in sexual intercourse and had become familiar with sexual terms. *Id.*, at 118.

The jury found respondent guilty of three counts of sexual assault on a minor under the age of 14, and the trial court imposed two consecutive life sentences and another concurrent life sentence.

B

Respondent took an appeal to the Nevada Supreme Court, which handed down its final decision in 1993, more than a decade before *Crawford*.[2] In analyzing respondent's contention that the admission of Autumn's out-of-court statements had violated his Confrontation Clause rights, the Nevada Supreme Court looked to *Ohio* v. *Roberts*, 448 U. S. 56 (1980), which was then the governing precedent of this Court. See *Bockting* v. *State*, 109 Nev. 103, 847 P. 2d 1364 (1993) *(per curiam)*. *Roberts* had held that the Confrontation Clause permitted the admission of a hearsay statement made by a declarant who was unavailable to testify if the statement bore sufficient indicia of reliability, either because the statement fell within a firmly rooted hearsay exception or because there were "particularized guarantees of trustworthiness" relating to the statement in question. 448 U. S., at 66. Applying *Roberts*, the Nevada Supreme Court held that the admission of Autumn's statements was constitutional because the circumstances surrounding the making of the statements provided particularized guarantees of trustworthiness. The court cited the "natural spontaneity" of Autumn's initial statements to her mother, her reiteration of the same account to Detective Zinovitch several days later,

[2]The State Supreme Court initially dismissed respondent's appeal in 1989, *Bockting* v. *State*, 105 Nev. 1023, 810 P. 2d 317 (unpublished table opinion), but we granted respondent's petition for a writ of certiorari and vacated and remanded the case for reconsideration in light of *Idaho* v. *Wright*, 497 U. S. 805 (1990), see *Bockting* v. *Nevada*, 497 U. S. 1021 (1990).

her use of anatomically correct dolls to demonstrate the assaults, and her detailed descriptions of sexual acts with which a 6-year-old would generally not be familiar. *Bockting*, *supra*, at 109–112, 847 P. 2d, at 1368–1370.

C

Respondent then filed a petition for a writ of habeas corpus with the United States District Court for the District of Nevada, arguing that the Nevada Supreme Court's decision violated his Confrontation Clause rights. The District Court denied the petition, holding that respondent was not entitled to relief under the habeas statute, 28 U. S. C. § 2254(d), because the Nevada Supreme Court's decision was not "'contrary to'" and did not "'involv[e] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.'" Order in *Bockting* v. *Bayer*, No. CV–N–98–0764–ECR (Mar. 19, 2002), App. 69–70. Respondent then appealed to the United States Court of Appeals for the Ninth Circuit.

While this appeal was pending, we issued our opinion in *Crawford*, in which we overruled *Roberts* and held that "[t]estimonial statements of witnesses absent from trial" are admissible "only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine [the witness]." 541 U. S., at 59. See also *Davis* v. *Washington*, 547 U. S. 813 (2006). We noted that the outcome in *Roberts*—as well as the outcome in all similar cases decided by this Court—was consistent with the rule announced in *Crawford*, but we concluded that the interpretation of the Confrontation Clause set out in *Roberts* was unsound in several respects. See *Crawford*, *supra*, at 60 ("Although the results of our decisions have generally been faithful to the original meaning of the Confrontation Clause, the same cannot be said of our rationales"). First, we observed that *Roberts* potentially excluded too much testimony because it imposed Confrontation Clause restrictions on non-

testimonial hearsay not governed by that Clause. 541 U. S., at 60. At the same time, we noted, the *Roberts* test was too "malleable" in permitting the admission of *ex parte* testimonial statements. 541 U. S., at 60. We concluded:

> "Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of 'reliability.' . . . Admitting statements deemed reliable by a judge is fundamentally at odds with the right to confrontation. To be sure, the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. The Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined." *Id.*, at 61.

D

On appeal from the denial of his petition for writ of habeas corpus, respondent contended that if the rule in *Crawford* had been applied to his case, Autumn's out-of-court statements could not have been admitted into evidence and the jury would not have convicted him. Respondent further argued that *Crawford* should have been applied to his case because the *Crawford* rule was either (1) an old rule in existence at the time of his conviction or (2) a "'watershed'" rule that implicated "the fundamental fairness and accuracy of the criminal proceeding." *Saffle* v. *Parks*, 494 U. S. 484, 495 (1990) (quoting *Teague*, 489 U. S., at 311 (plurality opinion)).

A divided panel of the Ninth Circuit reversed the District Court, holding that *Crawford* applies retroactively to cases

on collateral review. *Bockting* v. *Bayer*, 399 F. 3d 1010, as amended, 408 F. 3d 1127 (2005). In the panel's lead opinion, Judge McKeown concluded that *Crawford* announced a new rule of criminal procedure, 399 F. 3d, at 1014–1016, but that the decision was nevertheless retroactive on collateral review because it announced a watershed rule that "rework[ed] our understanding of bedrock criminal procedure," *id.*, at 1016.[3] Judge Noonan concurred, but his preferred analysis differed from Judge McKeown's. Judge Noonan believed that *Crawford* did not announce a new rule, 399 F. 3d, at 1022–1024, but "[a]s an alternative to [this] analysis and in order to provide a precedent for [the] court," he "also concur[red] in Judge McKeown's analysis and opinion," *id.*, at 1024. Judge Wallace, concurring and dissenting, agreed with Judge McKeown that *Crawford* announced a new procedural rule but argued that *Crawford* did not rise to the level of a watershed rule under this Court's jurisprudence. The Ninth Circuit denied rehearing en banc, with nine judges dissenting. 418 F. 3d 1055 (2005).

The panel's decision that *Crawford* is retroactive to cases on collateral review conflicts with the decision of every other Court of Appeals and State Supreme Court that has addressed this issue.[4] We granted certiorari to resolve this conflict. 547 U. S. 1127 (2006).

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[3]Judge McKeown then held respondent merited habeas corpus relief under the Antiterrorism and Effective Death Penalty Act of 1996 because that statute incorporates our *Teague* v. *Lane*, 489 U. S. 288 (1989), retroactivity analysis. 399 F. 3d, at 1021–1022.

[4]See, *e. g.*, *Lave* v. *Dretke*, 444 F. 3d 333 (CA5 2006); *Espy* v. *Massac*, 443 F. 3d 1362 (CA11 2006); *Murillo* v. *Frank*, 402 F. 3d 786 (CA7 2005); *Dorchy* v. *Jones*, 398 F. 3d 783 (CA6 2005); *Brown* v. *Uphoff*, 381 F. 3d 1219 (CA10 2004); *Mungo* v. *Duncan*, 393 F. 3d 327 (CA2 2004); *Edwards* v. *People*, 129 P. 3d 977 (Colo. 2006) (en banc); *Ennis* v. *State*, 122 Nev. 694, 137 P. 3d 1095 (2006); *Danforth* v. *State*, 718 N. W. 2d 451 (Minn. 2006); *State* v. *Williams*, 695 N. W. 2d 23 (Iowa 2005); *Chandler* v. *Crosby*, 916 So. 2d 728 (Fla. 2005); *In re Markel*, 154 Wash. 2d 262, 111 P. 3d 249 (2005).

II

A

In *Teague* and subsequent cases, we have laid out the framework to be used in determining whether a rule announced in one of our opinions should be applied retroactively to judgments in criminal cases that are already final on direct review. Under the *Teague* framework, an old rule applies both on direct and collateral review, but a new rule is generally applicable only to cases that are still on direct review. See *Griffith* v. *Kentucky*, 479 U. S. 314 (1987). A new rule applies retroactively in a collateral proceeding only if (1) the rule is substantive or (2) the rule is a "'watershed rul[e] of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." *Saffle*, *supra*, at 495 (quoting *Teague*, *supra*, at 311 (plurality opinion)).

B

In this case, it is undisputed that respondent's conviction became final on direct appeal well before *Crawford* was decided. We therefore turn to the question whether *Crawford* applied an old rule or announced a new one. A new rule is defined as "a rule that . . . was not '*dictated* by precedent existing at the time the defendant's conviction became final.'" *Saffle*, *supra*, at 488 (quoting *Teague*, *supra*, at 301 (plurality opinion); emphasis in original).

Applying this definition, it is clear that *Crawford* announced a new rule. The *Crawford* rule was not "dictated" by prior precedent. Quite the opposite is true: The *Crawford* rule is flatly inconsistent with the prior governing precedent, *Roberts*, which *Crawford* overruled. See *Davis*, 547 U. S., at 825, n. 4, 834. "The explicit overruling of an earlier holding no doubt creates a new rule." *Saffle*, *supra*, at 488.

In concluding that *Crawford* merely applied an old rule, Judge Noonan relied on our observation in *Crawford* that the holdings in our prior decisions, including those that applied

the *Roberts* rule, had been generally consistent with the rule announced in *Crawford* (and with the Framers' understanding of the meaning of the Confrontation Clause, which provided the basis for the *Crawford* decision). See 541 U. S., at 57–59. But the *Crawford* Court was quick to note that the "rationales" of our prior decisions had been inconsistent with the *Crawford* rule. *Id.*, at 60. "'The "new rule" principle . . . validates reasonable, good-faith interpretations of existing precedents made by state courts even though they are shown to be contrary to later decisions.'" *Lockhart* v. *Fretwell*, 506 U. S. 364, 372–373 (1993) (quoting *Butler* v. *McKellar*, 494 U. S. 407, 414 (1990)). And it is stating the obvious to say that, prior to *Crawford*, "reasonable jurists," *Graham* v. *Collins*, 506 U. S. 461, 467 (1993), could have reached the conclusion that the *Roberts* rule was the rule that governed the admission of hearsay statements made by an unavailable declarant.

Because the *Crawford* rule was not dictated by the governing precedent existing at the time when respondent's conviction became final, the *Crawford* rule is a new rule.

III

A

Because *Crawford* announced a "new rule" and because it is clear and undisputed that the rule is procedural and not substantive, that rule cannot be applied in this collateral attack on respondent's conviction unless it is a "'watershed rul[e] of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." *Saffle*, 494 U. S., at 495 (quoting *Teague*, 489 U. S., at 311 (plurality opinion)). This exception is "extremely narrow," *Schriro* v. *Summerlin*, 542 U. S. 348, 352 (2004). We have observed that it is "'unlikely'" that any such rules "'ha[ve] yet to emerge,'" *ibid.* (quoting *Tyler* v. *Cain*, 533 U. S. 656, 667, n. 7 (2001); internal quotation marks omitted); see also *O'Dell* v. *Netherland*, 521 U. S. 151, 157 (1997); *Graham*, *supra*, at 478;

Teague, supra, at 313 (plurality opinion). And in the years since *Teague*, we have rejected every claim that a new rule satisfied the requirements for watershed status. See, *e. g.*, *Summerlin*, *supra* (rejecting retroactivity for *Ring* v. *Arizona*, 536 U. S. 584 (2002)); *Beard* v. *Banks*, 542 U. S. 406 (2004) (rejecting retroactivity for *Mills* v. *Maryland*, 486 U. S. 367 (1988)); *O'Dell*, *supra* (rejecting retroactivity for *Simmons* v. *South Carolina*, 512 U. S. 154 (1994)); *Gilmore* v. *Taylor*, 508 U. S. 333 (1993) (rejecting retroactivity for a new rule relating to jury instructions on homicide); *Sawyer* v. *Smith*, 497 U. S. 227 (1990) (rejecting retroactivity for *Caldwell* v. *Mississippi*, 472 U. S. 320 (1985)).

In order to qualify as watershed, a new rule must meet two requirements. First, the rule must be necessary to prevent "an '"impermissibly large risk"'" of an inaccurate conviction. *Summerlin*, *supra*, at 356; see also *Tyler*, 533 U. S., at 665. Second, the rule must "alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Ibid.* (internal quotation marks omitted; emphasis deleted). We consider each of these requirements in turn.

B

The *Crawford* rule does not satisfy the first requirement relating to an impermissibly large risk of an inaccurate conviction. To be sure, the *Crawford* rule reflects the Framers' preferred mechanism (cross-examination) for ensuring that inaccurate out-of-court testimonial statements are not used to convict an accused. But in order for a new rule to meet the accuracy requirement at issue here, "[i]t is . . . not enough . . . to say that [the] rule is aimed at improving the accuracy of trial," *Sawyer*, 497 U. S., at 242, or that the rule "is directed toward the enhancement of reliability and accuracy in some sense," *id.*, at 243. Instead, the question is whether the new rule remedied "an '"impermissibly large risk"'" of an inaccurate conviction. *Summerlin*, *supra*, at 356.

Guidance in answering this question is provided by *Gideon* v. *Wainwright*, 372 U. S. 335 (1963), to which we have repeatedly referred in discussing the meaning of the *Teague* exception at issue here. See, *e. g.*, *Beard*, *supra*, at 417; *Saffle*, *supra*, at 495; *Gilmore*, *supra*, at 364 (Blackmun, J., dissenting). In *Gideon*, the only case that we have identified as qualifying under this exception, the Court held that counsel must be appointed for any indigent defendant charged with a felony. When a defendant who wishes to be represented by counsel is denied representation, *Gideon* held, the risk of an unreliable verdict is intolerably high. See *Mickens* v. *Taylor*, 535 U. S. 162, 166 (2002); *United States* v. *Cronic*, 466 U. S. 648, 658–659 (1984); *Gideon*, *supra*, at 344–345. The new rule announced in *Gideon* eliminated this risk.

The *Crawford* rule is in no way comparable to the *Gideon* rule. The *Crawford* rule is much more limited in scope, and the relationship of that rule to the accuracy of the factfinding process is far less direct and profound. *Crawford* overruled *Roberts* because *Roberts* was inconsistent with the original understanding of the meaning of the Confrontation Clause, not because the Court reached the conclusion that the overall effect of the *Crawford* rule would be to improve the accuracy of factfinding in criminal trials. Indeed, in *Crawford* we recognized that even under the *Roberts* rule, this Court had never specifically approved the introduction of testimonial hearsay statements. 541 U. S., at 57–60. Accordingly, it is not surprising that the overall effect of *Crawford* with regard to the accuracy of factfinding in criminal cases is not easy to assess.

With respect to *testimonial* out-of-court statements, *Crawford* is more restrictive than was *Roberts*, and this may improve the accuracy of factfinding in some criminal cases. Specifically, under *Roberts*, there may have been cases in which courts erroneously determined that testimonial statements were reliable. But see 418 F. 3d, at 1058 (O'Scannlain, J., dissenting from denial of rehearing en banc) (observ-

ing that it is unlikely that this occurred "in anything but the exceptional case"). But whatever improvement in reliability *Crawford* produced in this respect must be considered together with *Crawford*'s elimination of Confrontation Clause protection against the admission of unreliable out-of-court nontestimonial statements. Under *Roberts*, an out-of-court nontestimonial statement not subject to prior cross-examination could not be admitted without a judicial determination regarding reliability. Under *Crawford*, on the other hand, the Confrontation Clause has no application to such statements and therefore permits their admission even if they lack indicia of reliability.

It is thus unclear whether *Crawford*, on the whole, decreased or increased the number of unreliable out-of-court statements that may be admitted in criminal trials. But the question here is not whether *Crawford* resulted in some net improvement in the accuracy of factfinding in criminal cases. Rather, "the question is whether testimony admissible under *Roberts* is so much more unreliable than that admissible under *Crawford* that the *Crawford* rule is 'one without which the likelihood of an accurate conviction is *seriously* diminished.'" 399 F. 3d, at 1028 (Wallace, J., concurring and dissenting) (quoting *Summerlin*, 542 U. S., at 352; internal quotation marks omitted; emphasis in original). *Crawford* did not effect a change of this magnitude.

C

The *Crawford* rule also did not "alter our understanding of the *bedrock procedural elements* essential to the fairness of a proceeding." *Sawyer*, *supra*, at 242 (internal quotation marks omitted; emphasis in original). Contrary to the suggestion of the Court of Appeals, see 399 F. 3d, at 1019 (relying on the conclusion that "the right of cross-examination as an adjunct to the constitutional right of confrontation" is a "bedrock procedural rul[e]"), this requirement cannot be met simply by showing that a new procedural rule is *based on* a

"bedrock" right. We have frequently held that the *Teague* bar to retroactivity applies to new rules that are based on "bedrock" constitutional rights. See, *e. g.*, *Beard*, 542 U. S., at 418. Similarly, "[t]hat a new procedural rule is 'fundamental' in some abstract sense is not enough." *Summerlin*, *supra*, at 352.

Instead, in order to meet this requirement, a new rule must itself constitute a previously unrecognized bedrock procedural element that is essential to the fairness of a proceeding. In applying this requirement, we again have looked to the example of *Gideon*, and "we have not hesitated to hold that less sweeping and fundamental rules" do not qualify. *Beard*, *supra*, at 418.

In this case, it is apparent that the rule announced in *Crawford*, while certainly important, is not in the same category with *Gideon*. *Gideon* effected a profound and "'sweeping'" change. *Beard*, *supra*, at 418 (quoting *O'Dell*, 521 U. S., at 167). The *Crawford* rule simply lacks the "primacy" and "centrality" of the *Gideon* rule, *Saffle*, 494 U. S., at 495, and does not qualify as a rule that "alter[ed] our understanding of the bedrock procedural elements essential to the fairness of a proceeding," *Sawyer*, 497 U. S., at 242 (internal quotation marks omitted; emphasis deleted).

IV

In sum, we hold that *Crawford* announced a "new rule" of criminal procedure and that this rule does not fall within the *Teague* exception for watershed rules. We therefore reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

SINOCHEM INTERNATIONAL CO. LTD. *v.* MALAYSIA INTERNATIONAL SHIPPING CORP.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 06–102. Argued January 9, 2007—Decided March 5, 2007

A contract between petitioner (Sinochem), a Chinese state-owned importer, and a domestic corporation not a party here (Triorient) provided that Sinochem would purchase steel coils and that Triorient would be paid under a letter of credit by producing a valid bill of lading certifying that the coils had been loaded for shipment to China on or before April 30, 2003. Triorient subchartered a vessel owned by respondent (Malaysia International), a Malaysian company, to transport the coils, and hired a stevedoring company to load the coils in Philadelphia. A bill of lading, dated April 30, 2003, triggered payment under the letter of credit. Sinochem petitioned a Chinese admiralty court for preservation of a maritime claim against Malaysia International and arrest of the vessel, alleging that the Malaysian company had falsely backdated the bill of lading. The Chinese court ordered the ship arrested, and Sinochem timely filed a complaint in that tribunal. The Chinese admiralty court rejected Malaysia International's jurisdictional objections to Sinochem's complaint, and that ruling was affirmed on appeal.

Shortly after the Chinese admiralty court ordered the vessel's arrest, Malaysia International filed this action in a United States District Court, asserting that Sinochem's preservation petition to the Chinese court contained misrepresentations, and seeking compensation for losses sustained due to the ship's arrest. Sinochem moved to dismiss on several grounds, including lack of subject-matter and personal jurisdiction and the doctrine of *forum non conveniens*, under which a federal district court may dismiss an action if a court abroad is the more appropriate and convenient forum for adjudicating the controversy. The District Court determined it had subject-matter jurisdiction over the cause, concluded it lacked personal jurisdiction over Sinochem under Pennsylvania law, conjectured that limited discovery might reveal that it had personal jurisdiction under Federal Rule of Civil Procedure 4(k)(2), but dismissed on *forum non conveniens* grounds, finding that the case could be adjudicated adequately and more conveniently in the Chinese courts. Agreeing that there was subject-matter jurisdiction and that personal jurisdiction could not be resolved *sans* discovery, the Third Circuit panel

Syllabus

held that the District Court could not dismiss the case under the *forum non conveniens* doctrine unless and until it determined definitively that it had both subject-matter and personal jurisdiction.

Held: A district court has discretion to respond at once to a defendant's *forum non conveniens* plea, and need not take up first any other threshold objection. In particular, a court need not resolve whether it has authority to adjudicate the cause (subject-matter jurisdiction) or personal jurisdiction over the defendant if it determines that, in any event, a foreign tribunal is the more suitable arbiter of the merits of the case. Pp. 429–436.

(a) A federal court has discretion to dismiss on *forum non conveniens* grounds "when an alternative forum has jurisdiction to hear [the] case, and . . . trial in the chosen forum would establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience, or . . . the chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems." *American Dredging Co.* v. *Miller*, 510 U. S. 443, 447–448. Such a dismissal reflects a court's assessment of a "range of considerations, most notably the convenience to the parties and the practical difficulties that can attend the adjudication of a dispute in a certain locality." *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 723. A defendant invoking *forum non conveniens* ordinarily bears a heavy burden in opposing the plaintiff's chosen forum. When the plaintiff's choice is not its home forum, however, the presumption in the plaintiff's favor "applies with less force," for the assumption that the chosen forum is appropriate is then "less reasonable." *Piper Aircraft Co.* v. *Reyno*, 454 U. S. 235, 255–256. Pp. 429–430.

(b) Although a federal court generally may not rule on the merits of a case without first determining that it has jurisdiction over the cause (subject-matter jurisdiction) and the parties (personal jurisdiction), see *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 93–102, there is no mandatory sequencing of nonmerits issues, see *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U. S. 574, 584. A court has leeway "to choose among threshold grounds for denying audience to a case on the merits," *id.*, at 585. Pp. 430–431.

(c) *Forum non conveniens* is a nonmerits ground for dismissal. See *American Dredging*, 510 U. S., at 454; *Chick Kam Choo* v. *Exxon Corp.*, 486 U. S. 140, 148. A district court therefore may dispose of an action by a *forum non conveniens* dismissal, bypassing questions of subject-matter and personal jurisdiction, when considerations of convenience, fairness, and judicial economy so warrant. *Forum non conveniens*, like other threshold issues, may involve a brush with "factual and legal is-

sues of the underlying dispute." *Van Cauwenberghe* v. *Biard*, 486 U. S. 517, 529. But the critical point, rendering a *forum non conveniens* determination a nonmerits issue that can be determined before taking up jurisdictional inquiries is this: Resolving a *forum non conveniens* motion does not entail any assumption by the court of substantive law-declaring power. Statements in *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, that "*forum non conveniens* can never apply if there is absence of jurisdiction," *id.*, at 504, and that "[i]n all cases in which . . . *forum non conveniens* comes into play, it presupposes at least two forums in which the defendant is amenable to process," *id.*, at 506–507, account in large part for the Third Circuit's conclusion. Those statements draw their meaning from the context in which they were embedded. *Gulf Oil* answered in the affirmative the question whether a court that had jurisdiction over the cause and the parties and was a proper venue could nevertheless dismiss the action under the *forum non conveniens* doctrine. *Gulf Oil* did not address the issue decided here: whether a federal court can presume, rather than dispositively decide, its jurisdiction before dismissing under the doctrine of *forum non conveniens*. The quoted statements, confined to the setting in which they were made, are no hindrance to the decision reached today. The Third Circuit's further concern—that a court failing first to establish its jurisdiction could not condition a *forum non conveniens* dismissal on the defendant's waiver of any statute of limitations defense or objection to the foreign forum's jurisdiction, and thus could not shield the plaintiff against a foreign tribunal's refusal to entertain the suit—is not implicated on these facts. Malaysia International faces no genuine risk that the more convenient forum will not take up the case. This Court therefore need not decide whether a court conditioning a *forum non conveniens* dismissal on the waiver of jurisdictional or limitations defenses in the foreign forum must first determine its own authority to adjudicate the case. Pp. 432–435.

(d) This is a textbook case for immediate *forum non conveniens* dismissal. The District Court's subject-matter jurisdiction presented an issue of first impression in the Third Circuit, and was considered at some length by the courts below. Discovery concerning personal jurisdiction would have burdened Sinochem with expense and delay to scant purpose: The District Court inevitably would dismiss the case without reaching the merits, given its well-considered *forum non conveniens* appraisal. Judicial economy is disserved by continuing litigation in the District Court given the proceedings long launched in China. And the gravamen of Malaysia International's complaint—misrepresentations to the Chinese admiralty court in securing the vessel's arrest in China—is an issue best left for determination by the Chinese courts. If, as in the

mine run of cases, a court can readily determine that it lacks jurisdiction over the cause or the defendant, the proper course would be to dismiss on that ground. But where subject-matter or personal jurisdiction is difficult to determine, and *forum non conveniens* considerations weigh heavily in favor of dismissal, the court properly takes the less burdensome course. Pp. 435–436.

436 F. 3d 349, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.

Gregory A. Castanias argued the cause for petitioner. With him on the briefs was *Stephen M. Hudspeth*.

Douglas H. Hallward-Driemeier argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Kneedler*, *Michael S. Raab*, and *Stephanie R. Marcus*.

Ann-Michele G. Higgins argued the cause for respondent. With her on the brief were *Joshua Bachrach* and *Kevin L. McGee*.

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the doctrine of *forum non conveniens*, under which a federal district court may dismiss an action on the ground that a court abroad is the more appropriate and convenient forum for adjudicating the controversy. We granted review to decide a question that has divided the Courts of Appeals: "[w]hether a district court must first conclusively establish [its own] jurisdiction before dismissing a suit on the ground of *forum non conveniens?*" Pet. for Cert. i. We hold that a district court has discretion to respond at once to a defendant's *forum non conveniens* plea, and need not take up first any other threshold objection. In particular, a court need not resolve whether it has authority to adjudicate the cause (subject-matter jurisdiction) or personal jurisdiction over the defendant if it determines that, in any event, a foreign tribunal is plainly the more suitable arbiter of the merits of the case.

I

The underlying controversy concerns alleged misrepresentations by a Chinese corporation to a Chinese admiralty court resulting in the arrest of a Malaysian vessel in China. In 2003, petitioner Sinochem International Company Ltd. (Sinochem), a Chinese state-owned importer, contracted with Triorient Trading, Inc. (Triorient), a domestic corporation that is not a party to this suit, to purchase steel coils. Pursuant to the agreement, Triorient would receive payment under a letter of credit by producing a valid bill of lading certifying that the coils had been loaded for shipment to China on or before April 30, 2003. Memorandum and Order of Feb. 27, 2004, No. Civ. A. 03–3771 (ED Pa.), App. to Pet. for Cert. 48a–49a (hereinafter Feb. 27 Memo & Order).

Triorient subchartered a vessel owned by respondent Malaysia International Shipping Corporation (Malaysia International), a Malaysian company, to transport the coils to China. Triorient then hired a stevedoring company to load the steel coils at the Port of Philadelphia. A bill of lading, dated April 30, 2003, triggered payment under the letter of credit. *Id.*, at 49a.

On June 8, 2003, Sinochem petitioned the Guangzhou Admiralty Court in China for interim relief, *i. e.*, preservation of a maritime claim against Malaysia International and arrest of the vessel that carried the steel coils to China. In support of its petition, Sinochem alleged that the Malaysian company had falsely backdated the bill of lading. The Chinese tribunal ordered the ship arrested the same day. *Id.*, at 50a; App. in No. 04–1816 (CA3), pp. 56a–57a (Civil Ruling of the Guangzhou Admiralty Court).

Thereafter, on July 2, 2003, Sinochem timely filed a complaint against Malaysia International and others in the Guangzhou Admiralty Court. Sinochem's complaint repeated the allegation that the bill of lading had been falsified resulting in unwarranted payment. Malaysia International contested the jurisdiction of the Chinese tribunal. Feb. 27

Memo & Order, at 50a; App. in No. 04–1816 (CA3), pp. 52a–53a (Civil Complaint in Guangzhou Admiralty Court). The admiralty court rejected Malaysia International's jurisdictional objection, and that ruling was affirmed on appeal by the Guangdong Higher People's Court. App. 16–23.

On June 23, 2003, shortly after the Chinese court ordered the vessel's arrest, Malaysia International filed the instant action against Sinochem in the United States District Court for the Eastern District of Pennsylvania. Malaysia International asserted in its federal court pleading that Sinochem's preservation petition to the Guangzhou court negligently misrepresented the "vessel's fitness and suitability to load its cargo." Feb. 27 Memo & Order, at 50a (internal quotation marks omitted). As relief, Malaysia International sought compensation for the loss it sustained due to the delay caused by the ship's arrest. Sinochem moved to dismiss the suit on several grounds, including lack of subject-matter jurisdiction, lack of personal jurisdiction, *forum non conveniens*, and international comity. App. in No. 04–1816 (CA3), pp. 14a–20a, 39a–40a.

The District Court first determined that it had subject-matter jurisdiction under 28 U. S. C. § 1333(1) (admiralty or maritime jurisdiction). Feb. 27 Memo & Order, at 51a–54a. The court next concluded that it lacked personal jurisdiction over Sinochem under Pennsylvania's long-arm statute, 42 Pa. Cons. Stat. § 5301 *et seq.* (2002). Nevertheless, the court conjectured, limited discovery might reveal that Sinochem's national contacts sufficed to establish personal jurisdiction under Federal Rule of Civil Procedure 4(k)(2). Feb. 27 Memo & Order, at 55a–63a. The court did not permit such discovery, however, because it determined that the case could be adjudicated adequately and more conveniently in the Chinese courts. *Id.*, at 63a–69a; Memorandum and Order of Apr. 13, 2004, No. Civ. A. 03–3771 (ED Pa.), App. to Pet. for Cert. 40a–47a (hereinafter Apr. 13 Memo &

Order) (denial of Rule 59(e) motion). No significant interests of the United States were involved, the court observed, Feb. 27 Memo & Order, at 65a–67a; Apr. 13 Memo & Order, at 44a–47a, and while the cargo had been loaded in Philadelphia, the nub of the controversy was entirely foreign: The dispute centered on the arrest of a foreign ship in foreign waters pursuant to the order of a foreign court. Feb. 27 Memo & Order, at 67a. Given the proceedings ongoing in China, and the absence of cause "to second-guess the authority of Chinese law or the competence of [Chinese] courts," the District Court granted the motion to dismiss under the doctrine of *forum non conveniens*. *Id.*, at 68a.

A panel of the Court of Appeals for the Third Circuit agreed there was subject-matter jurisdiction under § 1333(1), and that the question of personal jurisdiction could not be resolved *sans* discovery. Although the court determined that *forum non conveniens* is a nonmerits ground for dismissal, the majority nevertheless held that the District Court could not dismiss the case under the *forum non conveniens* doctrine unless and until it determined definitively that it had both subject-matter jurisdiction over the cause and personal jurisdiction over the defendant. 436 F. 3d 349 (2006).

Judge Stapleton dissented. Requiring a district court to conduct discovery on a jurisdictional question when it "rightly regards [the forum] as inappropriate," he maintained, "subverts a primary purpose of" the *forum non conveniens* doctrine: "protect[ing] a defendant from . . . substantial and unnecessary effort and expense." *Id.*, at 368. The "court makes no assumption of law declaring power," Judge Stapleton observed, "when it decides not to exercise whatever jurisdiction it may have." *Id.*, at 370 (quoting *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U. S. 574, 584 (1999), in turn quoting *In re Papandreou*, 139 F. 3d 247, 255 (CADC 1998)).

We granted certiorari, 548 U. S. 942 (2006), to resolve a conflict among the Circuits on whether *forum non conve-*

niens can be decided prior to matters of jurisdiction. Compare 436 F. 3d, at 361–364 (case below); *Dominguez-Cota* v. *Cooper Tire & Rubber Co.*, 396 F. 3d 650, 652–654 (CA5 2005) *(per curiam)* (jurisdictional issues must be resolved in advance of a *forum non conveniens* ruling), with *Intec USA, LLC* v. *Engle*, 467 F. 3d 1038, 1041 (CA7 2006); *In re Arbitration Between Monegasque de Reassurances S. A. M. (Monde Re)* v. *NAK Naftogaz of Ukraine*, 311 F. 3d 488, 497–498 (CA2 2002); *In re Papandreou*, 139 F. 3d, at 255–256 (*forum non conveniens* may be resolved ahead of jurisdictional issues). Satisfied that *forum non conveniens* may justify dismissal of an action though jurisdictional issues remain unresolved, we reverse the Third Circuit's judgment.

II

A federal court has discretion to dismiss a case on the ground of *forum non conveniens* "when an alternative forum has jurisdiction to hear [the] case, and . . . trial in the chosen forum would establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience, or . . . the chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems." *American Dredging Co.* v. *Miller*, 510 U. S. 443, 447–448 (1994) (quoting *Piper Aircraft Co.* v. *Reyno*, 454 U. S. 235, 241 (1981), in turn quoting *Koster* v. *(American) Lumbermens Mut. Casualty Co.*, 330 U. S. 518, 524 (1947)). Dismissal for *forum non conveniens* reflects a court's assessment of a "range of considerations, most notably the convenience to the parties and the practical difficulties that can attend the adjudication of a dispute in a certain locality." *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 723 (1996) (citations omitted). We have characterized *forum non conveniens* as, essentially, "a supervening venue provision, permitting displacement of the ordinary rules of venue when, in light of certain conditions, the trial court thinks that jurisdiction ought to be declined." *American Dredging*, 510 U. S.,

at 453; cf. *In re Papandreou*, 139 F. 3d, at 255 (*forum non conveniens* "involves a deliberate abstention from the exercise of jurisdiction").

The common-law doctrine of *forum non conveniens* "has continuing application [in federal courts] only in cases where the alternative forum is abroad," *American Dredging*, 510 U. S., at 449, n. 2, and perhaps in rare instances where a state or territorial court serves litigational convenience best. See 14D C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §3828, pp. 620–623, and nn. 9–10 (3d ed. 2007). For the federal court system, Congress has codified the doctrine and has provided for transfer, rather than dismissal, when a sister federal court is the more convenient place for trial of the action. See 28 U. S. C. §1404(a) ("For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."); cf. §1406(a) ("The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."); *Goldlawr, Inc.* v. *Heiman*, 369 U. S. 463, 466 (1962) (Section 1406(a) "authorize[s] the transfer of [a] cas[e] . . . whether the court in which it was filed had personal jurisdiction over the defendants or not.").

A defendant invoking *forum non conveniens* ordinarily bears a heavy burden in opposing the plaintiff's chosen forum. When the plaintiff's choice is not its home forum, however, the presumption in the plaintiff's favor "applies with less force," for the assumption that the chosen forum is appropriate is in such cases "less reasonable." *Piper Aircraft Co.*, 454 U. S., at 255–256.

III

Steel Co. v. *Citizens for Better Environment*, 523 U. S. 83 (1998), clarified that a federal court generally may not rule

on the merits of a case without first determining that it has jurisdiction over the category of claim in suit (subject-matter jurisdiction) and the parties (personal jurisdiction). See *id.*, at 93–102. "Without jurisdiction the court cannot proceed at all in any cause"; it may not assume jurisdiction for the purpose of deciding the merits of the case. *Id.*, at 94 (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1869)).

While *Steel Co.* confirmed that jurisdictional questions ordinarily must precede merits determinations in dispositional order, *Ruhrgas* held that there is no mandatory "sequencing of jurisdictional issues." 526 U. S., at 584. In appropriate circumstances, *Ruhrgas* decided, a court may dismiss for lack of personal jurisdiction without first establishing subject-matter jurisdiction. See *id.*, at 578.

Both *Steel Co.* and *Ruhrgas* recognized that a federal court has leeway "to choose among threshold grounds for denying audience to a case on the merits." *Ruhrgas*, 526 U. S., at 585; *Steel Co.*, 523 U. S., at 100–101, n. 3. Dismissal short of reaching the merits means that the court will not "proceed at all" to an adjudication of the cause. Thus, a district court declining to adjudicate state-law claims on discretionary grounds need not first determine whether those claims fall within its pendent jurisdiction. See *Moor* v. *County of Alameda*, 411 U. S. 693, 715–716 (1973). Nor must a federal court decide whether the parties present an Article III case or controversy before abstaining under *Younger* v. *Harris*, 401 U. S. 37 (1971). See *Ellis* v. *Dyson*, 421 U. S. 426, 433–434 (1975). A dismissal under *Totten* v. *United States*, 92 U. S. 105 (1876) (prohibiting suits against the Government based on covert espionage agreements), we recently observed, also "represents the sort of 'threshold question' [that] . . . may be resolved before addressing jurisdiction." *Tenet* v. *Doe*, 544 U. S. 1, 7, n. 4 (2005). The principle underlying these decisions was well stated by the Seventh Circuit: "[J]urisdiction is vital only if the court proposes to issue a judgment on the merits." *Intec USA*, 467 F. 3d, at 1041.

IV

A *forum non conveniens* dismissal "den[ies] audience to a case on the merits," *Ruhrgas*, 526 U. S., at 585; it is a determination that the merits should be adjudicated elsewhere. See *American Dredging*, 510 U. S., at 454; *Chick Kam Choo* v. *Exxon Corp.*, 486 U. S. 140, 148 (1988). The Third Circuit recognized that *forum non conveniens* "is a non-merits ground for dismissal." 436 F. 3d, at 359. Accord *In re Papandreou*, 139 F. 3d, at 255; *Monde Re*, 311 F. 3d, at 497–498. A district court therefore may dispose of an action by a *forum non conveniens* dismissal, bypassing questions of subject-matter and personal jurisdiction, when considerations of convenience, fairness, and judicial economy so warrant.

As the Third Circuit observed, *Van Cauwenberghe* v. *Biard*, 486 U. S. 517, 527–530 (1988), does not call for a different conclusion. See 436 F. 3d, at 359–360. *Biard* presented the question whether a district court's *denial* of a motion to dismiss on the ground of *forum non conveniens* qualifies for immediate appeal under the collateral order doctrine of *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949). *Biard*, 486 U. S., at 527. The Court held that a refusal to dismiss for *forum non conveniens*, an interlocutory order, does not fall within the circumscribed collateral order exception to the firm final judgment rule generally governing federal court proceedings. In that context, the Court observed that some factors relevant to *forum non conveniens*, notably what evidence will bear on the plaintiff's claim or on defenses to the claim, "will substantially overlap factual and legal issues of the underlying dispute." *Id.*, at 529.

That observation makes eminent sense when the question is whether an issue is so discrete from the merits as to justify departure from the rule that a party may not appeal until the district court has rendered a final judgment disassociating itself from the case. See *Coopers & Lybrand* v. *Livesay*,

437 U. S. 463, 468 (1978) ("To come within the 'small class' of decisions excepted from the final-judgment rule by *Cohen*, the order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment."). *Biard*'s point, however, does not carry over to the question here at issue.

Of course a court may need to identify the claims presented and the evidence relevant to adjudicating those issues to intelligently rule on a *forum non conveniens* motion. But other threshold issues may similarly involve a brush with "factual and legal issues of the underlying dispute." *Biard*, 486 U. S., at 529. For example, in ruling on the nonmerits threshold question of personal jurisdiction, a court may be called upon to determine whether a defendant's contacts with the forum relate to the claim advanced by the plaintiff. See, *e. g.*, *Ruhrgas*, 526 U. S., at 581, n. 4 (noting that the District Court's holding that it lacked personal jurisdiction rested on its conclusion "that Marathon had not shown that Ruhrgas pursued the alleged pattern of fraud and misrepresentation during the Houston meetings"). The critical point here, rendering a *forum non conveniens* determination a threshold, nonmerits issue in the relevant context, is simply this: Resolving a *forum non conveniens* motion does not entail any assumption by the court of substantive "law-declaring power." See *id.*, at 584–585 (quoting *In re Papandreou*, 139 F. 3d, at 255).

Statements in this Court's opinion in *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501 (1947), account in large part for the Third Circuit's conclusion that *forum non conveniens* can come into play only after a domestic court determines that it has jurisdiction over the cause and the parties and is a proper venue for the action. See 436 F. 3d, at 361–362. The Court said in *Gulf Oil* that "the doctrine of *forum non conveniens* can never apply if there is absence of jurisdiction," 330 U. S., at 504, and that "[i]n all cases in which . . .

forum non conveniens comes into play, it presupposes at least two forums in which the defendant is amenable to process," *id.*, at 506–507.

Those statements from *Gulf Oil*, perhaps less than "felicitously" crafted, see Tr. of Oral Arg. 14, draw their meaning from the context in which they were embedded. The question presented in *Gulf Oil* was whether a court fully competent to adjudicate the case, *i. e.*, one that plainly had jurisdiction over the cause and the parties and was a proper venue, could nevertheless dismiss the action under the *forum non conveniens* doctrine. The Court answered that question "yes."

As to the first statement—that "*forum non conveniens* can never apply if there is absence of jurisdiction"—it is of course true that once a court determines that jurisdiction is lacking, it can proceed no further and must dismiss the case on that account. In that scenario "*forum non conveniens* can never apply."

The second statement—that *forum non conveniens* "presupposes at least two forums" with authority to adjudicate the case—was made in response to the *Gulf Oil* plaintiff's argument to this effect: Because the federal forum chosen by the plaintiff possessed jurisdiction and venue was proper, the court was obliged to adjudicate the case. See 330 U. S., at 504 (explaining that a court's statutory empowerment to entertain a suit "does not settle the question whether it must do so"). Notably, in speaking of what the *forum non conveniens* doctrine "presupposes," the Court said nothing that would negate a court's authority to presume, rather than dispositively decide, the propriety of the forum in which the plaintiff filed suit.

In sum, *Gulf Oil* did not present the question we here address: whether a federal court can dismiss under the *forum non conveniens* doctrine before definitively ascertaining its own jurisdiction. Confining the statements we have

quoted to the setting in which they were made, we find in *Gulf Oil* no hindrance to the decision we reach today.

The Third Circuit expressed the further concern that a court failing first to establish its jurisdiction could not condition a *forum non conveniens* dismissal on the defendant's waiver of any statute of limitations defense or objection to the foreign forum's jurisdiction. Unable so to condition a dismissal, the Court of Appeals feared, a court could not shield the plaintiff against a foreign tribunal's refusal to entertain the suit. 436 F. 3d, at 363, and n. 21. Accord *In re Papandreou*, 139 F. 3d, at 256, n. 6. Here, however, Malaysia International faces no genuine risk that the more convenient forum will not take up the case. Proceedings to resolve the parties' dispute are underway in China, with Sinochem as the plaintiff. Jurisdiction of the Guangzhou Admiralty Court has been raised, determined, and affirmed on appeal. We therefore need not decide whether a court conditioning a *forum non conveniens* dismissal on the waiver of jurisdictional or limitations defenses in the foreign forum must first determine its own authority to adjudicate the case.

V

This is a textbook case for immediate *forum non conveniens* dismissal. The District Court's subject-matter jurisdiction presented an issue of first impression in the Third Circuit, see 436 F. 3d, at 355, and was considered at some length by the courts below. Discovery concerning personal jurisdiction would have burdened Sinochem with expense and delay. And all to scant purpose: The District Court inevitably would dismiss the case without reaching the merits, given its well-considered *forum non conveniens* appraisal. Judicial economy is disserved by continuing litigation in the Eastern District of Pennsylvania given the proceedings long launched in China. And the gravamen of Malaysia International's complaint—misrepresentations to the Guangzhou

Admiralty Court in the course of securing arrest of the vessel in China—is an issue best left for determination by the Chinese courts.

If, however, a court can readily determine that it lacks jurisdiction over the cause or the defendant, the proper course would be to dismiss on that ground. In the mine run of cases, jurisdiction "will involve no arduous inquiry" and both judicial economy and the consideration ordinarily accorded the plaintiff's choice of forum "should impel the federal court to dispose of [those] issue[s] first." *Ruhrgas*, 526 U. S., at 587–588. But where subject-matter or personal jurisdiction is difficult to determine, and *forum non conveniens* considerations weigh heavily in favor of dismissal, the court properly takes the less burdensome course.

* * *

For the reasons stated, the judgment of the Court of Appeals is reversed, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

Per Curiam

LANCE ET AL. *v.* COFFMAN, COLORADO SECRETARY OF STATE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

No. 06–641. Decided March 5, 2007

Appellants/Plaintiffs, Colorado citizens, filed this federal suit, arguing that Article V, § 44, of the State Constitution, as interpreted by the State Supreme Court, violates their rights under the Elections Clause of the U. S. Constitution by depriving the state legislature of its responsibility to draw congressional districts. After this Court vacated the District Court's initial judgment that it lacked jurisdiction under the *Rooker-Feldman* doctrine, the District Court held that citizen-plaintiffs had standing to bring their Elections Clause challenge, but that the suit was barred by issue preclusion.

Held:

1. Plaintiffs lack standing to bring their Elections Clause claim. "A plaintiff raising only a generally available grievance about government . . . does not state an Article III case or controversy." *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 573–574. Here, the only injury alleged is that the Elections Clause has not been followed—precisely the kind of undifferentiated, generalized grievance about government conduct this Court has refused to countenance in the past. See, *e. g.*, *Fairchild* v. *Hughes*, 258 U. S. 126. *Smiley* v. *Holm*, 285 U. S. 355, and *Ohio ex rel. Davis* v. *Hildebrant*, 241 U. S. 565, distinguished.

2. The District Court's judgment is affirmed as to the dismissal of plaintiffs' Petition Clause claim.

444 F. Supp. 2d 1149, affirmed in part, vacated in part, and remanded.

PER CURIAM.

The Elections Clause of the United States Constitution provides that the "Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the *Legislature* thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." Art. I, § 4, cl. 1 (emphasis added). When Colorado legislators were unable to redraw congressional districts after the 2000 census to accommodate

an additional Representative, a state court did it for them. See *Beauprez* v. *Avalos*, 42 P. 3d 642 (Colo. 2002). The legislature *was* able to pass a redistricting plan in 2003, which Colorado's Governor signed into law. See Colo. Rev. Stat. Ann. §2–1–101.

Colorado's attorney general, however, filed an original action in the Colorado Supreme Court to enjoin Colorado's secretary of state from implementing this new plan, noting that Article V, §44, of the Colorado Constitution limits redistricting to once per census. The Colorado General Assembly intervened in the action to defend its plan. The Colorado Supreme Court granted the injunction, holding that "judicially-created districts are just as binding and permanent as districts created by the General Assembly," and that the court-drawn plan must remain in effect until the next decennial census. *People ex rel. Salazar* v. *Davidson*, 79 P. 3d 1221, 1231 (2003), cert. denied, 541 U. S. 1093 (2004). The court further held that this result did not offend the Elections Clause of the United States Constitution. 79 P. 3d, at 1232.

Immediately after *Salazar* was decided, four Colorado citizens—none of whom had participated in *Salazar*—filed the instant action in Federal District Court. They argued that Article V, §44, of the Colorado Constitution, as interpreted by the Colorado Supreme Court, violates their rights under the Elections Clause.

The District Court initially determined that it lacked jurisdiction to hear the suit in light of the *Rooker-Feldman* doctrine, but we vacated and remanded for further proceedings. *Lance* v. *Dennis*, 546 U. S. 459 (2006) *(per curiam)*. On remand, the District Court held that the citizen-plaintiffs had standing to bring their Elections Clause challenge. *Lance* v. *Dennis*, 444 F. Supp. 2d 1149, 1154–1155 (2006). The court went on, however, to hold that the suit was barred by issue preclusion because the plaintiffs "stand in privity with the Secretary of State and the General Assembly," who

were on the losing side in the *Salazar* litigation. 444 F. Supp. 2d, at 1161. The concurring judge concluded that appellants lacked standing to sue in the first place. *Id.*, at 1162 (Porfilio, J., concurring in result). Plaintiffs appeal once again.

Federal courts must determine that they have jurisdiction before proceeding to the merits. *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 94–95 (1998).* Article III of the Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." One component of the case-or-controversy requirement is standing, which requires a plaintiff to demonstrate the now-familiar elements of injury in fact, causation, and redressability. See *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992). "We have consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy." *Id.*, at 573–574. See also *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 344 (2006) (refusing to create an exception to the general prohibition on taxpayer standing for challenges to state tax or spending decisions, and observing that taxpayer standing has been rejected "because the alleged injury is not 'concrete and particularized,' but instead a grievance the taxpayer 'suffers in some indefinite way in common with people generally'" (citation omitted)).

Our refusal to serve as a forum for generalized grievances has a lengthy pedigree. In *Fairchild* v. *Hughes*, 258 U. S. 126 (1922), for example, a citizen sued the Secretary of State

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*Our prior decision in this case did not violate this principle because *Rooker-Feldman* concerns a district court's subject-matter jurisdiction, *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280, 291 (2005), and "there is no unyielding jurisdictional hierarchy," *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U. S. 574, 578 (1999).

and the Attorney General to challenge the procedures by which the Nineteenth Amendment was ratified. We dismissed the suit because it was "not a case within the meaning of . . . Article III." *Id.*, at 129. The plaintiff sought to assert "only the right, possessed by every citizen, to require that the Government be administered according to law and that the public moneys be not wasted." *Ibid.* "Obviously," we held, "this general right does not entitle a private citizen to institute [a suit] in the federal courts." *Id.*, at 129–130.

Similarly, in *Ex parte Lévitt*, 302 U. S. 633 (1937) *(per curiam)*, we dismissed a citizen suit claiming that Justice Black's appointment to this Court contravened the Constitution's Ineligibility Clause, Art. I, §6, cl. 2. We found that the petitioner had no interest in the suit "other than that of a citizen and a member of the bar of this Court." 302 U. S., at 634. That was not enough. To have standing, we observed, a plaintiff must have more than "a general interest common to all members of the public." *Ibid.* See also *Frothingham* v. *Mellon*, decided with *Massachusetts* v. *Mellon*, 262 U. S. 447, 488 (1923) (taxpayer standing cannot be predicated upon an injury the plaintiff "suffers in some indefinite way in common with people generally"). Cf. *Tyler* v. *Judges of Court of Registration*, 179 U. S. 405, 406 (1900) ("[E]ven in a proceeding which he prosecutes for the benefit of the public . . . [the plaintiff] must generally aver an injury peculiar to himself, as distinguished from the great body of his fellow citizens").

A pair of more recent cases further illustrates the point. In *United States* v. *Richardson*, 418 U. S. 166 (1974), a federal taxpayer challenged the Government's failure to disclose certain CIA expenditures as a violation of the Constitution's Accounts Clause, which requires that "a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." Art. I, §9, cl. 7. Relying on *Lévitt*, this Court dismissed the claim as a "generalized grievance" that is "plainly undifferentiated and

'common to all members of the public.'" *Richardson*, 418 U. S., at 176–177. See also *id.*, at 191 (Powell, J., concurring) ("The power recognized in *Marbury* v. *Madison*, 1 Cranch 137 (1803), is a potent one. Its prudent use seems to me incompatible with unlimited notions of taxpayer and citizen standing").

The same day, in *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U. S. 208 (1974), we addressed standing to bring a challenge under the Constitution's Incompatibility Clause, which provides that "no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office." Art. I, §6, cl. 2. Citizen-taxpayers brought a lawsuit contending that Members of Congress who were also members of the military Reserves violated the Incompatibility Clause. This Court dismissed for lack of standing. It "reaffirm[ed] *Lévitt* in holding that standing to sue may not be predicated upon an interest of the kind alleged here which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share." 418 U. S., at 220. Refusing to entertain generalized grievances ensures that "there is a real need to exercise the power of judicial review" in a particular case, and it helps guarantee that courts fashion remedies "no broader than required by the precise facts to which the court's ruling would be applied." *Id.*, at 221–222. In short, it ensures that courts exercise power that is judicial in nature.

The instant case parallels *Fairchild*, *Lévitt*, and their progeny. The plaintiffs here are four Colorado voters. Three days after the Colorado Supreme Court issued its decision in *Salazar*, they filed a complaint alleging that "Article V, §44 of the Colorado Constitution, as interpreted in *Salazar*, violated [the Elections Clause] of the U. S. Constitution by depriving the state legislature of its responsibility to draw congressional districts." *Lance* v. *Davidson*, 379 F. Supp. 2d 1117, 1122 (2005). In light of the discussion

above, the problem with this allegation should be obvious: The only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed. This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past. It is quite different from the sorts of injuries alleged by plaintiffs in voting rights cases where we have found standing. See, *e. g.*, *Baker* v. *Carr*, 369 U. S. 186, 207–208 (1962). Because plaintiffs assert no particularized stake in the litigation, we hold that they lack standing to bring their Elections Clause claim.

Our two decisions construing the term "Legislature" in the Elections Clause do not contradict this holding. Each of these cases was filed by a relator on behalf of the State rather than private citizens acting on their own behalf, as is the case here. See *State ex rel. Smiley* v. *Holm*, 184 Minn. 647, 238 N. W. 792 (1931) *(per curiam)*, rev'd *sub nom. Smiley* v. *Holm*, 285 U. S. 355 (1932); *Ohio ex rel. Davis* v. *Hildebrant*, 241 U. S. 565 (1916). In neither case did we address whether a private citizen had alleged a "concrete and particularized" injury sufficient to satisfy the requirements of Article III.

The judgment of the United States District Court for the District of Colorado is therefore vacated in part, and the case is remanded with instructions to dismiss the Elections Clause claim for lack of standing. We affirm the District Court's dismissal of the Petition Clause claim.

It is so ordered.

Syllabus

TRAVELERS CASUALTY & SURETY CO. OF AMERICA *v.* PACIFIC GAS & ELECTRIC CO.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 05–1429. Argued January 16, 2007—Decided March 20, 2007

After respondent (PG&E) filed for Chapter 11 bankruptcy, petitioner (Travelers), which had previously issued a surety bond to guarantee PG&E's payment of state workers' compensation benefits, asserted a claim in the bankruptcy action to protect itself should PG&E default on the benefits. With the Bankruptcy Court's approval, PG&E agreed to insert language into its reorganization plan and disclosure statement to protect Travelers in case of such a default. Additional litigation over the negotiated language nevertheless ensued and was ultimately resolved by a court-approved stipulation stating, *inter alia*, that Travelers could assert a general unsecured claim for attorney's fees, which were authorized in the parties' original indemnity agreements. When Travelers filed an amended claim for such fees, PG&E objected based on the rule the Ninth Circuit adopted in its prior *Fobian* decision that where the litigated issues involve not basic contract enforcement questions, but issues peculiar to federal bankruptcy law, attorney's fees generally will not be awarded. The Bankruptcy Court rejected Travelers' claim on that basis, and the District Court and the Ninth Circuit affirmed.

Held:

1. Federal bankruptcy law does not disallow contract-based claims for attorney's fees based solely on the fact that the fees were incurred litigating bankruptcy law issues. Because the *Fobian* rule finds no support in federal bankruptcy law, the Ninth Circuit erred in disallowing Travelers' claim. Pp. 448–454.

(a) The American rule that "the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser," *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U. S. 240, 247, may be overcome by, *inter alia*, an "enforceable contract" allocating such fees, *Fleischmann Distilling Corp.* v. *Maier Brewing Co.*, 386 U. S. 714, 717. A contract allocating attorney's fees that is enforceable under substantive, nonbankruptcy law is allowable in bankruptcy except where the Bankruptcy Code provides otherwise. Cf. *Security Mortgage Co.* v. *Powers*, 278 U. S. 149, 154. The Code does not do so here. Pp. 448–449.

(b) Under the Bankruptcy Code, the bankruptcy court "shall allow" a creditor's claim "except to the extent that" the claim implicates any of

nine enumerated exceptions. 11 U. S. C. §502(b). Because Travelers' attorney's fees claim has nothing to do with the exceptions set forth in §§502(b)(2)–(9), it must be allowed unless it is unenforceable under §502(b)(1), which disallows any claim that is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." Pp. 449–450.

(c) Section 502(b)(1) is most naturally understood to provide that, with limited exceptions, any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy. This reading is consistent not only with the plain statutory text, but also with the settled principle that "[c]reditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code." *Raleigh* v. *Illinois Dept. of Revenue*, 530 U. S. 15, 20. That principle requires bankruptcy courts to consult state law in determining the validity of most claims. See *ibid.* Thus, when the Code uses the word "claim"—*i. e.*, a "right to payment," §101(5)(A)—it is usually referring to a right to payment recognized under state law, "[u]nless some federal interest requires a different result," *Butner* v. *United States*, 440 U. S. 48, 55. Pp. 450–451.

(d) The *Fobian* rule finds no support in §502 or elsewhere in federal bankruptcy law. The *Fobian* court did not identify any Code provision as presenting such support, but instead cited three of its own prior decisions, none of which identified any basis for disallowing a contractual claim for attorney's fees. Nor did the court have occasion to do so; in each of those cases, the attorney's fees claim failed as a matter of state law. The absence of such textual support is fatal for the *Fobian* rule. See *FCC* v. *NextWave Personal Communications Inc.*, 537 U. S. 293, 302. In light of §502(b)(1)'s broad, permissive scope, and the Court's prior recognition that "the character of [a contractual] obligation to pay attorney's fees presents no obstacle to enforcing it in bankruptcy," it necessarily follows that the *Fobian* rule cannot stand. *Security Mortgage*, *supra*, at 154. Pp. 451–454.

2. The Court expresses no opinion as to PG&E's arguments that unsecured claims for contractual attorney's fees, such as Travelers', are categorically disallowed by §506(b), which expressly authorizes such fees "[t]o the extent that an allowed secured claim is secured by property [whose] value [exceeds] the amount of such claim," and that such disallowance is confirmed by the Bankruptcy Code's structure and purpose, as examined against the backdrop of pre-Code bankruptcy law. The Court ordinarily does not consider arguments, such as these, that were

neither raised nor addressed below, *Cooper Industries, Inc.* v. *Aviall Services, Inc.*, 543 U. S. 157, 168–169, and PG&E has not identified any circumstances warranting an exception to that rule here. PG&E's insistence that its arguments are "fairly included" within the question presented in the certiorari petition is not persuasive. Pp. 454–456.

167 Fed. Appx. 593, vacated and remanded.

ALITO, J., delivered the opinion for a unanimous Court.

G. Eric Brunstad, Jr., argued the cause for petitioner. With him on the briefs were *Rheba Rutkowski*, *Robert A. Brundage*, and *William C. Heuer*.

E. Joshua Rosenkranz argued the cause for resondent. With him on the brief were *David B. Goodwin*, *Carren Shulman*, *Timothy S. Mehok*, *Gary M. Kaplan*, and *Thomas C. Goldstein*.*

JUSTICE ALITO delivered the opinion of the Court.

We are asked to consider whether federal bankruptcy law precludes an unsecured creditor from recovering attorney's fees authorized by a prepetition contract and incurred in postpetition litigation. The Court of Appeals for the Ninth Circuit held, based on a rule previously adopted by that court, that such fees are categorically prohibited—even where the contractual allocation of attorney's fees would be enforceable under applicable nonbankruptcy law—to the extent the litigation involves issues of federal bankruptcy law. Because that rule finds no support in the Bankruptcy Code, we vacate and remand.

I

Respondent Pacific Gas and Electric Company (PG&E) filed a voluntary Chapter 11 bankruptcy petition in April

*Briefs of *amici curiae* urging reversal were filed for the Surety & Fidelity Association of America by *Edward G. Gallagher*; and for the American Insurance Association by *Craig Goldblatt* and *Caroline Rogus*.

Robert M. Zinman filed a brief for Richard Aaron et al. as *amici curiae* urging affirmance.

2001, 11 U. S. C. § 1101 *et seq.*, and continued thereafter to operate its business as a "debtor in possession," §§ 1107(a), 1108. The bankruptcy filing caught the attention of petitioner Travelers Casualty & Surety Company (Travelers), which had previously issued a $100 million surety bond on PG&E's behalf to the California Department of Industrial Relations, guaranteeing PG&E's payment of state workers' compensation benefits to injured employees.[1] In connection with the bond, PG&E executed a series of indemnity agreements in favor of Travelers. The indemnity agreements provide that PG&E will be responsible for any loss Travelers might incur in connection with the bonds, including any attorney's fees incurred in pursuing, protecting, or litigating Travelers' rights in connection with those bonds.

Although no default occurred, Travelers asserted a claim in the bankruptcy action to protect itself in case PG&E defaulted on its workers' compensation benefits at some point in the future, requiring Travelers to make payments under its bond. In response to Travelers' claim, and with the knowledge and approval of the Bankruptcy Court, PG&E agreed to insert language into its reorganization plan and disclosure statement to protect Travelers' right to indemnity and subrogation in the event of a default by PG&E.

Travelers claimed, however, that PG&E then unilaterally altered the negotiated language in a way that substantially diminished the protection it had been seeking. According to Travelers, that development resulted in additional litiga-

[1] California law required PG&E to provide workers' compensation benefits for its employees by either (1) purchasing workers' compensation insurance from a licensed provider of such insurance or (2) adopting a plan, with the State's approval, to self-insure. PG&E chose the latter option, and was therefore required to post security with the State to ensure ongoing payment of mandatory workers' compensation benefits. See Cal. Lab. Code Ann. §§ 3700, 3701 (West 2003). Travelers posted the required security by issuing a bond on PG&E's behalf. The bond makes Travelers liable, up to $100 million, for workers' compensation benefits in the event of a default by PG&E.

tion, but Travelers and PG&E ultimately resolved the dispute by entering into a stipulation that was later approved by the Bankruptcy Court. In addition to accommodating Travelers' substantive concerns, the stipulation stated that Travelers "'may assert its claim for attorneys' fees under the [i]ndemnity [a]greements'" (subject to PG&E's right to object) as a general unsecured claim against PG&E. Brief for Petitioner 17.

Travelers subsequently filed an amended proof of claim seeking to recover the attorney's fees it incurred in connection with PG&E's bankruptcy proceedings. PG&E objected, arguing that Travelers could not recover attorney's fees incurred while litigating issues of bankruptcy law.

The Bankruptcy Court agreed and rejected Travelers' claim on that basis. App. to Pet. for Cert. 23a–25a. Travelers appealed that ruling to the District Court. The District Court affirmed, relying on *In re Fobian*, 951 F. 2d 1149 (CA9 1991), which held that "where the litigated issues involve not basic contract enforcement questions, but issues peculiar to federal bankruptcy law, attorney's fees will not be awarded absent bad faith or harassment by the losing party," *id.*, at 1153. See App. to Pet. for Cert. 10a, 17a.

Travelers appealed again, and the United States Court of Appeals for the Ninth Circuit affirmed. 167 Fed. Appx. 593 (2006). The panel acknowledged that, in at least some circumstances, a "'prevailing party in a bankruptcy proceeding may be entitled to an award of attorney fees in accordance with applicable state law . . . .'" *Id.*, at 594 (quoting *In re Baroff*, 105 F. 3d 439, 441 (CA9 1997)). The panel nevertheless rejected Travelers' claim based on the *Fobian* rule, which it cited for the proposition that "attorney fees are not recoverable in bankruptcy for litigating issues 'peculiar to federal bankruptcy law.'" 167 Fed. Appx., at 594 (quoting *Fobian*, *supra*, at 1153). The panel explained that, because the fees claimed by Travelers were incurred litigating issues

that were "governed entirely by federal bankruptcy law," Travelers' claim necessarily failed. 167 Fed. Appx., at 594.[2]

Travelers sought review in this Court, noting a conflict among the Courts of Appeals regarding the validity of the *Fobian* rule. Compare *Fobian*, *supra*, at 1153, with *In re Shangra-La, Inc.*, 167 F. 3d 843, 848–849 (CA4 1999). We granted certiorari to resolve that conflict, *post*, p. 948.

II

Under the American Rule, "the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser." *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U. S. 240, 247 (1975); see *Hauenstein* v. *Lynham*, 100 U. S. 483, 490–491 (1880); *Arcambel* v. *Wiseman*, 3 Dall. 306 (1796). This default rule can, of course, be overcome by statute. *Fleischmann Distilling Corp.* v. *Maier Brewing Co.*, 386 U. S. 714, 717 (1967). It can also be overcome by an "enforceable contract" allocating attorney's fees. *Ibid.*

In a case governed by the Bankruptcy Act of 1898, we observed that "[t]he character of [a contractual] obligation to pay attorney's fees presents no obstacle to enforcing it in bankruptcy, either as a provable claim or by way of a lien upon specific property." *Security Mortgage Co.* v. *Powers*, 278 U. S. 149, 154 (1928). Similarly, under the terms of the current Bankruptcy Code, it remains true that an otherwise enforceable contract allocating attorney's fees (*i. e.*, one that is enforceable under substantive, nonbankruptcy law) is allowable in bankruptcy except where the Bankruptcy Code provides otherwise. See 4 Collier on Bankruptcy

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[2]The Court of Appeals incorporated by reference the reasoning employed in *In re DeRoche*, 434 F. 3d 1188 (CA9 2006), which was decided by the same panel that decided this case. 167 Fed. Appx., at 593. Although the *DeRoche* opinion is longer than its counterpart in this case, it adds very little to the panel's explanation of the *Fobian* rule. See 434 F. 3d, at 1190–1192.

¶ 506.04[3][a], p. 506–118 (rev. 15th ed. 2006) (hereinafter Collier).

This case requires us to consider whether the Bankruptcy Code disallows contract-based claims for attorney's fees based solely on the fact that the fees at issue were incurred litigating issues of bankruptcy law. We conclude that it does not.

A

When a debtor declares bankruptcy, each of its creditors is entitled to file a proof of claim—*i. e.*, a document providing proof of a "right to payment," 11 U. S. C. § 101(5)(A)—against the debtor's estate. Once a proof of claim has been filed, the court must determine whether the claim is "allowed" under § 502(a) of the Bankruptcy Code: "A claim or interest, proof of which is filed under section 501 . . . is deemed allowed, unless a party in interest . . . objects."

But even where a party in interest objects, the court "shall allow" the claim "except to the extent that" the claim implicates any of the nine exceptions enumerated in § 502(b). Those exceptions apply where the claim at issue is "unenforceable against the debtor . . . under any agreement or applicable law," § 502(b)(1); "is for unmatured interest," § 502(b)(2); "is for [property tax that] exceeds the value of the [estate's] interest" in the property, § 502(b)(3); "is for services of an insider or attorney of the debtor" and "exceeds the reasonable value of such services," § 502(b)(4); is for unmatured debt on certain alimony and child support obligations, § 502(b)(5); is for certain "damages resulting from the termination" of a lease or employment contract, §§ 502(b)(6) and (7); "results from a reduction, due to late payment, in the amount of . . . credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor," § 502(b)(8); or was brought to the court's attention through an untimely proof of claim, § 502(b)(9).

Travelers' claim for attorney's fees has nothing to do with property tax, child support or alimony, services provided by an attorney of the debtor, damages resulting from the termination of a lease or employment contract, or the late payment of any employment tax. See §§ 502(b)(2)–(8). Nor does it appear that the proof of claim was untimely. See § 502(b)(9). Thus, Travelers' claim must be allowed under § 502(b) unless it is unenforceable within the meaning of § 502(b)(1).

B

Section 502(b)(1) disallows any claim that is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." This provision is most naturally understood to provide that, with limited exceptions, any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy. See 4 Collier ¶ 502.03[2][b], at 502–22 (explaining that § 502(b)(1) is generally understood to "make available to the trustee any defense" available to the debtor "under applicable nonbankruptcy law"—*i. e.*, any defense that the debtor "could have interposed, absent bankruptcy, in a suit on the [same substantive] claim by the creditor").

This reading of § 502(b)(1) is consistent not only with the plain statutory text, but also with the settled principle that "[c]reditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code." *Raleigh* v. *Illinois Dept. of Revenue*, 530 U. S. 15, 20 (2000). That principle requires bankruptcy courts to consult state law in determining the validity of most claims. See *ibid.*

Indeed, we have long recognized that the "'basic federal rule' in bankruptcy is that state law governs the substance of claims, Congress having 'generally left the determination of property rights in the assets of a bankrupt's estate

to state law.'" *Ibid.* (quoting *Butner* v. *United States*, 440 U. S. 48, 57, 54 (1979); citation omitted). Accordingly, when the Bankruptcy Code uses the word "claim"—which the Code itself defines as a "right to payment," 11 U. S. C. § 101(5)(A)—it is usually referring to a right to payment recognized under state law. As we stated in *Butner*, "[p]roperty interests are created and defined by state law," and "[u]nless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." 440 U. S., at 55; accord, *Vanston Bondholders Protective Comm.* v. *Green*, 329 U. S. 156, 161 (1946) ("What claims of creditors are valid and subsisting obligations against the bankrupt at the time a petition in bankruptcy is filed is a question which, in the absence of overruling federal law, is to be determined by reference to state law").

C

In rejecting Travelers' claim for contractual attorney's fees, the Court of Appeals did not conclude that the claim was "unenforceable" under § 502(b)(1) as a matter of applicable nonbankruptcy law. Nor did it conclude that Travelers' claim was rendered unenforceable by any provision of the Bankruptcy Code. To the contrary, the court acknowledged that, in at least some circumstances, a "'prevailing party in a bankruptcy proceeding may be entitled to an award of attorney fees in accordance with applicable state law . . . .'" 167 Fed. Appx., at 594 (quoting *Baroff*, 105 F. 3d, at 441).

The court nevertheless rejected Travelers' claim based solely on a rule of that court's own creation—the so-called *Fobian* rule—which dictates that "attorney fees are not recoverable in bankruptcy for litigating issues 'peculiar to federal bankruptcy law.'" 167 Fed. Appx., at 594 (quoting *Fobian*, 951 F. 2d, at 1153). The court explained that, because the fees claimed by Travelers were incurred litigating issues

that were "governed entirely by federal bankruptcy law," 167 Fed. Appx., at 594, Travelers' claim necessarily failed.

The *Fobian* rule finds no support in the Bankruptcy Code, either in § 502 or elsewhere. In *Fobian*, the court did not identify any provision of the Bankruptcy Code as providing support for the new rule. See 951 F. 2d, at 1153. Instead, the court cited three of its own prior decisions, *In re Johnson*, 756 F. 2d 738 (1985); *In re Coast Trading Co.*, 744 F. 2d 686 (1984); and *In re Fulwiler*, 624 F. 2d 908 (1980) *(per curium)*. Significantly, in none of those cases did the court identify any basis for disallowing a contractual claim for attorney's fees incurred litigating issues of federal bankruptcy law. Nor did the court have occasion to do so; in each of those cases, the claim for attorney's fees failed as a matter of state law. See *Johnson*, *supra*, at 741–742; *Coast Trading*, *supra*, at 693; *Fulwiler*, *supra*, at 910.[3]

The absence of textual support is fatal for the *Fobian* rule. Consistent with our prior statements regarding creditors' entitlements in bankruptcy, see, *e. g.*, *Raleigh*, *supra*, at 20, we generally presume that claims enforceable under applicable state law will be allowed in bankruptcy unless they are expressly disallowed. See 11 U. S. C. § 502(b). Neither the court below nor PG&E has offered any reason why the fact that the attorney's fees in this case were incurred lit-

[3] In *Johnson*, the debtor sought attorney's fees after the creditor unsuccessfully requested relief from the automatic stay under 11 U. S. C. § 362(d)(1). The debtor acknowledged that the contract between the parties entitled only the creditor to attorney's fees, but the debtor claimed that a California statute extended that entitlement to both parties. The court rejected that argument, noting that the statute applied only in the context of an "'action on a contract,'" and concluding that a request for relief from an automatic stay could not be considered an action on a contract. 756 F. 2d, at 741–742. Both *Coast Trading* and *Fulwiler* involved claims for attorney's fees based on an Oregon statute similar to the statute at issue in *Johnson;* the court found the statute inapplicable in both cases. *Coast Trading*, 744 F. 2d, at 693; *Fulwiler*, 624 F. 2d, at 909–910.

igating issues of federal bankruptcy law overcomes that presumption.

Section 502(b)(4) is instructive on this point. That provision expressly disallows claims for a particular category of attorney's fees—those "for services of an . . . attorney of the debtor," to the extent the claimed fees "excee[d] the reasonable value of such services." The existence of that provision suggests that, in its absence, a claim for such fees would be allowed in bankruptcy to the extent enforceable under state law. The absence of an analogous provision excluding the category of fees covered by the *Fobian* rule likewise suggests that the Code does not categorically disallow them. See 4 Collier ¶ 506.04[3][a], at 506–118 (concluding that *Fobian* "inverts the proper analysis" by allowing attorney's fees only where they are expressly authorized by the Bankruptcy Code, and explaining that "a claim for attorney's fees arising in the context of litigating bankruptcy issues must be allowed if valid under applicable state law").

Congress, of course, has the power to amend the Bankruptcy Code by adding a provision expressly disallowing claims for attorney's fees incurred by creditors in the litigation of bankruptcy issues. But because no such provision exists, the Bankruptcy Code provides no basis for disallowing Travelers' claim on the grounds stated by the Ninth Circuit.

As we explained in *FCC* v. *NextWave Personal Communications Inc.*, 537 U. S. 293 (2003), "where Congress has intended to provide . . . exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly." *Id.*, at 302. Here, the Bankruptcy Code does not "clearly and expressly" compel courts to follow the *Fobian* rule; on the contrary, the Code says *nothing* about unsecured claims for contractual attorney's fees incurred while litigating issues of bankruptcy law. In light of the broad, permissive scope of § 502(b)(1), and our prior recognition that "[t]he character of [a contractual] obligation to pay attorney's fees presents no

obstacle to enforcing it in bankruptcy," it necessarily follows that the *Fobian* rule cannot stand. *Security Mortgage*, 278 U. S., at 154; see *Cohen* v. *de la Cruz*, 523 U. S. 213, 221 (1998) ("We . . . 'will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure' " (quoting *Pennsylvania Dept. of Public Welfare* v. *Davenport*, 495 U. S. 552, 563 (1990))).

III

PG&E makes no effort to defend the *Fobian* rule. See Tr. of Oral Arg. 28 (conceding that PG&E does not defend the *Fobian* rule, and acknowledging that "[t]he Fobian rule is wrong . . . as to the distinction that it draws between State law and Federal litigation"). Instead, PG&E argues that § 506(b) categorically disallows unsecured claims for contractual attorney's fees and—noting that Travelers' claim is unsecured—asks us to affirm on that basis. Section 506(b) provides as follows:

> "To the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose." 11 U. S. C. § 506(b) (2000 ed., Supp. V).

According to PG&E, this provision authorizes claims for contractual attorney's fees to the extent the creditor is oversecured, but disallows such claims to the extent the creditor is either not oversecured or (like Travelers) completely unsecured. This reading of the Code, PG&E argues, "is not a matter of negative implication, but of explicit negation." Brief for Respondent 18. PG&E also argues that the structure and purpose of the Bankruptcy Code, examined against the backdrop of pre-Code bankruptcy law, confirm that Con-

gress did not intend to allow unsecured creditors to recover attorney's fees. See *id.*, at 25–38.

PG&E did not raise these arguments below. Consequently, none of the lower courts had occasion to address them. Nor were these arguments presented in PG&E's brief in opposition to certiorari. PG&E nevertheless insists that we should address these arguments as though they were "fairly included" within the question presented in Travelers' petition for certiorari. See *id.*, at 41. That contention appears to be premised on the theory that "the Fobian rule reaches the correct conclusion in this case," but "doesn't go far enough in . . . preventing creditors from requiring other creditors to pay for their attorneys' fees." Tr. of Oral Arg. 25.

We are not persuaded. We granted certiorari to resolve a conflict among the lower courts regarding the *Fobian* rule, which is analytically distinct from, and fundamentally at odds with, PG&E's reading of § 506(b).[4]

In any event, we ordinarily do not consider claims that were neither raised nor addressed below, *Cooper Industries, Inc.* v. *Aviall Services, Inc.*, 543 U. S. 157, 168–169 (2004), and PG&E has failed to identify any circumstances that would warrant an exception to that rule in this case. We therefore will not consider these arguments.[5]

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[4] PG&E's new reading of the Code would prohibit *all* unsecured creditors from recovering contractual, postpetition attorney's fees in bankruptcy proceedings—even if those fees were incurred while litigating issues of state law. See Brief for Respondent 17–19. The *Fobian* rule, by contrast, would allow such a recovery—even by unsecured creditors—so long as the litigation resulting in the claimed fees did not involve "issues peculiar to federal bankruptcy law." See *In re Fobian*, 951 F. 2d 1149, 1153 (CA9 1991).

[5] For similar reasons, we will not address PG&E's argument that Travelers' claim should be denied based on the theory that the fees at issue were incurred in connection with activities that were not reasonably necessary to preserve Travelers' rights and, alternatively, were not authorized by

Accordingly, we express no opinion with regard to whether, following the demise of the *Fobian* rule, other principles of bankruptcy law might provide an independent basis for disallowing Travelers' claim for attorney's fees. We conclude only that the Court of Appeals erred in disallowing that claim based on the fact that the fees at issue were incurred litigating issues of bankruptcy law.

* * *

The judgment of the United States Court of Appeals for the Ninth Circuit is therefore vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Travelers' contract with PG&E. See Brief for Respondent 42–49. This argument was not addressed below, was not raised in PG&E's brief in opposition to certiorari, and bears no relation to the question presented. See this Court's Rule 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court").

Syllabus

ROCKWELL INTERNATIONAL CORP. ET AL. *v.* UNITED STATES ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 05–1272. Argued December 5, 2006—Decided March 27, 2007

While employed as an engineer at a nuclear weapons plant run by petitioner Rockwell under a Government contract, respondent Stone predicted that Rockwell's system for creating solid "ponderete" blocks from toxic pond sludge and cement would not work because of problems in piping the sludge. However, Rockwell successfully made such blocks and discovered "insolid" ones only after Stone was laid off in 1986. In 1989, Stone filed a *qui tam* suit under the False Claims Act, which prohibits submitting false or fraudulent payment claims to the United States, 31 U. S. C. §3729(a); permits remedial civil actions to be brought by the Attorney General, §3730(a), or by private individuals in the Government's name, §3730(b)(1); but eliminates federal-court jurisdiction over actions "based upon the public disclosure of allegations or transactions . . . , unless the action is brought by the Attorney General or the person bringing the action is an original source of the information," §3730(e)(4)(A). An "original source" "has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action . . . based on the information." §3730(e)(4)(B). In 1996, the Government intervened, and, with Stone, filed an amended complaint, which did not allege that Stone's predicted piping-system defect caused the insolid blocks. Nor was such defect mentioned in a statement of claims included in the final pretrial order, which instead alleged that the ponderete failed because a new foreman used an insufficient cement-to-sludge ratio. The jury found for respondents with respect to claims covering the ponderete allegations, but found for Rockwell with respect to all other claims. The District Court denied Rockwell's postverdict motion to dismiss Stone's claims, finding that Stone was an original source. The Tenth Circuit affirmed in part, but remanded for the District Court to determine whether Stone had disclosed his information to the Government before filing the action. The District Court found Stone's disclosure inadequate, but the Tenth Circuit disagreed and held that Stone was an original source.

Syllabus

Held:

1. Section 3730(e)(4)'s original-source requirement is jurisdictional. Thus, regardless of whether Rockwell conceded Stone's original-source status, this Court must decide whether Stone meets this jurisdictional requirement. Pp. 467–470.

2. Because Stone does not meet §3730(e)(4)(B)'s requirement that a relator have "direct and independent knowledge of the information on which the allegations are based," he is not an original source. Pp. 470–476.

(a) The "information" to which subparagraph (B) speaks is the information on which the relator's allegations are based rather than the information on which the publicly disclosed allegations that triggered the public-disclosure bar are based. The subparagraph standing on its own suggests that disposition. And those "allegations" are not the same as the allegations referred to in subparagraph (A), which bars actions based on the "public disclosure of allegations or transactions" with an exception for cases brought by "an original source of the information." Had Congress wanted to link original-source status to information underlying public disclosure it would have used the identical phrase, "allegations or transactions." Furthermore, it is difficult to understand why Congress would care whether a relator knows about the information underlying a publicly disclosed allegation when the relator has direct and independent knowledge of different information supporting the same allegation. Pp. 470–472.

(b) In determining which "allegations" are relevant, that term is not limited to "allegations" in the original complaint, but includes the allegations as amended. The statute speaks of the relator's "allegations" *simpliciter*. Absent some limitation of §3730(e)(4)'s requirement to the initial complaint, this Court will not infer one. Here, where the final pretrial order superseded prior pleadings, this Court looks to the final pretrial order to determine original-source status. Pp. 473–475.

(c) Judged according to these principles, Stone's knowledge falls short. The only false claims found by the jury involved insolid ponderete discovered after Stone left his employment. Thus, he did not know that the ponderete had failed; he predicted it. And his prediction was a failed one, for Stone believed the piping system was defective when, in fact, the ponderete problem would be caused by a foreman's actions after Stone had left the plant. Stone's original-source status with respect to a separate, spray-irrigation claim did not provide jurisdiction over all of his claims. Section 3730(e)(4) does not permit juris-

Syllabus

diction in gross just because a relator is an original source with respect to some claim. Pp. 475–476.

3. The Government's intervention in this case did not provide an independent basis of jurisdiction with respect to Stone. The statute draws a sharp distinction between actions brought by a private person under §3730(b) and actions brought by the Attorney General under §3730(b). An action originally brought by a private person, which the Attorney General has joined, becomes an action brought by the Attorney General only after the private person has been ousted. Pp. 476–479.

92 Fed. Appx. 708, reversed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, SOUTER, THOMAS, and ALITO, JJ., joined. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 479. BREYER, J., took no part in the consideration or decision of the case.

Maureen E. Mahoney argued the cause for petitioners. With her on the briefs were *J. Scott Ballenger*, *Barry J. Blonien*, *Christopher J. Koenigs*, and *Michael B. Carroll*.

Maria T. Vullo argued the cause for respondent Stone. With her on the brief were *Evan Norris* and *Hartley David Alley*.

Malcolm L. Stewart argued the cause for respondent United States. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Kneedler*, *Douglas N. Letter*, and *Peter R. Maier*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Hospital Association et al. by *Jonathan L. Diesenhaus* and *Catherine E. Stetson;* for BP America Production Co. et al. by *Donald B. Ayer*, *Michael P. Graham*, and *Daniel M. McClure;* for the Chamber of Commerce of the United States of America et al. by *Herbert L. Fenster*, *Lawrence S. Ebner*, *Mark R. Troy*, *Robin S. Conrad*, and *Amar D. Sarwal;* for the National Defense Industrial Association by *Alan A. Pemberton* and *Sarah L. Wilson;* and for the Washington Legal Foundation et al. by *Alan I. Horowitz*, *Robert K. Huffman*, *Peter B. Hutt II*, *Daniel J. Popeo*, and *Paul D. Kamenar*.

Briefs of *amici curiae* urging affirmance were filed for the Taxpayers Against Fraud Education Fund et al. by *David C. Frederick*, *James*

JUSTICE SCALIA delivered the opinion of the Court.

The False Claims Act, 31 U. S. C. §§3729–3733, eliminates federal-court jurisdiction over actions under §3730 of the Act that are based upon the public disclosure of allegations or transactions "unless the action is brought by the Attorney General or the person bringing the action is an original source of the information." §3730(e)(4)(A). We decide whether respondent James Stone was an original source.

I

The mixture of concrete and pond sludge that is the subject of this case has taken nearly two decades to seep, so to speak, into this Court. Given the long history and the complexity of this litigation, it is well to describe the facts in some detail.

A

From 1975 through 1989, petitioner Rockwell International Corp. was under a management and operating contract with the Department of Energy (DOE) to run the Rocky Flats nuclear weapons plant in Colorado. The most significant portion of Rockwell's compensation came in the form of a semiannual "'award fee,'" the amount of which depended on DOE's evaluation of Rockwell's performance in a number of areas, including environmental, safety, and health concerns. *United States ex rel. Stone* v. *Rockwell Int'l Corp.*, 92 Fed. Appx. 708, 714 (CA10 2004).

From November 1980 through March 1986, James Stone worked as an engineer at the Rocky Flats plant. In the early 1980's, Rockwell explored the possibility of disposing of the toxic pond sludge that accumulated in solar evapora-

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W. Moorman, and *Marissa M. Tirona;* and for Patricia Haight et al. by *Jeremy L. Friedman*.

Briefs of *amici curiae* were filed for Comstock Resources, Inc., by *William Scott Hastings* and *John Robert Beatty;* and for Senator Charles E. Grassley by *John E. Clark*.

tion ponds at the facility, by mixing it with cement. The idea was to pour the mixture into large rectangular boxes, where it would solidify into "pondcrete" blocks that could be stored onsite or transported to other sites for disposal.

Stone reviewed a proposed manufacturing process for pondcrete in 1982. He concluded that the proposal "would not work," App. 175, and communicated that conclusion to Rockwell management in a written "Engineering Order." As Stone would later explain, he believed "the suggested process would result in an unstable mixture that would later deteriorate and cause unwanted release of toxic wastes to the environment." *Ibid.* He believed this because he "foresaw that the piping system" that extracted sludge from the solar ponds "would not properly remove the sludge and would lead to an inadequate mixture of sludge/waste and cement such that the 'pond crete' blocks would rapidly disintegrate thus creating additional contamination problems." *Id.*, at 290.

Notwithstanding Stone's prediction, Rockwell proceeded with its pondcrete project and successfully manufactured "concrete hard" pondcrete during the period of Stone's employment at Rocky Flats. It was only after Stone was laid off in March 1986 that what the parties have called "insolid" pondcrete blocks were discovered. According to respondents, Rockwell knew by October 1986 that a substantial number of pondcrete blocks were insolid, but DOE did not become aware of the problem until May 1988, when several pondcrete blocks began to leak, leading to the discovery of thousands of other insolid blocks. The media reported these discoveries, 3 Appellants' App. in No. 99–1351 etc. (CA10), pp. 889–38 to 889–39, and attributed the malfunction to Rockwell's reduction of the ratio of concrete to sludge in the mixture.

In June 1987, more than a year after he had left Rockwell's employ, Stone went to the Federal Bureau of Investigation (FBI) with allegations of environmental crimes at Rocky

Flats during the time of his employment. According to the court below, Stone alleged that

> "contrary to public knowledge, Rocky Flats accepted hazardous and nuclear waste from other DOE facilities; that Rockwell employees were 'forbidden from discussing any controversies in front of a DOE employee'; that although Rocky Flats' fluid bed incinerators failed testing in 1981, the pilot incinerator remained on line and was used to incinerate wastes daily since 1981, including plutonium wastes which were then sent out for burial; that Rockwell distilled and fractionated various oils and solvents although the wastes were geared for incineration; that Stone believed that the ground water was contaminated from previous waste burial and land application, and that hazardous waste lagoons tended to overflow during and after 'a good rain,' causing hazardous wastes to be discharged without first being treated." App. to Pet. for Cert. 4a.

Stone provided the FBI with 2,300 pages of documents, buried among which was his 1982 engineering report predicting that the pondcrete-system design would not work. Stone did not discuss his pondcrete allegations with the FBI in their conversations.[1]

Based in part on information allegedly learned from Stone, the Government obtained a search warrant for Rocky Flats, and on June 6, 1989, 75 FBI and Environmental Protection Agency agents raided the facility. The affidavit in support of the warrant included allegations (1) that pondcrete blocks were insolid "due to an inadequate waste-concrete mixture," App. 429, (2) that Rockwell obtained award fees based on its alleged "'excellent'" management of Rocky Flats, *id.*, at 98, and (3) that Rockwell made false statements and concealed material facts in violation of the Resource Conservation and Recovery Act of 1976 (RCRA), 90 Stat. 2811, as amended, 42

[1] Stone claimed the contrary, but the District Court found that he had failed to establish that fact.

U. S. C. §6928, and 18 U. S. C. §1001. Newspapers published these allegations. In March 1992, Rockwell pleaded guilty to 10 environmental violations, including the knowing storage of insolid ponderete blocks in violation of RCRA. Rockwell agreed to pay $18.5 million in fines.

B

In July 1989, Stone filed a *qui tam* suit under the False Claims Act.[2] That Act prohibits false or fraudulent claims for payment to the United States, 31 U. S. C. §3729(a), and authorizes civil actions to remedy such fraud to be brought by the Attorney General, §3730(a), or by private individuals in the Government's name, §3730(b)(1). The Act provides, however, that "[n]o court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions . . . from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information." §3730(e)(4)(A). An "original source" is "an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information." §3730(e)(4)(B).

Stone's complaint alleged that Rockwell was required to comply with certain federal and state environmental laws and regulations, including RCRA; that Rockwell committed numerous violations of these laws and regulations throughout the 1980's;[3] and that, in order to induce the Government

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[2] *Qui tam* is short for "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," which means "who pursues this action on our Lord the King's behalf as well as his own."

[3] The laws and regulations allegedly violated included DOE Order Nos. 5480.2 (Dec. 13, 1982), 5483.1 as superseded by 5483.1A (June 22, 1983), and 6430.1 (Dec. 12, 1983) (DOE General Design Criteria Manual); Colo. Rev. Stat. Ann. §§25–5–501 *et seq.* (1982) (Hazardous Substances), 25–7–101 *et seq.* (1982 and Supp. 1988) (Air Quality Control Program), 25–7–501 *et seq.* (Supp. 1988) (Asbestos Control), 25–15–101 (1982 and Supp. 1988)

to make payments or approvals under Rockwell's contract, Rockwell knowingly presented false and fraudulent claims to the Government in violation of the False Claims Act, 31 U. S. C. §3729(a). As required under the Act, Stone filed his complaint under seal and simultaneously delivered to the Government a confidential disclosure statement describing "substantially all material evidence and information" in his possession, §3730(b)(2). The statement identified 26 environmental and safety issues, only one of which involved ponderete. With respect to that issue, Stone explained in his statement that he had reviewed the design for the ponderete system and had foreseen that the piping mechanism would not properly remove the sludge, which in turn would lead to an inadequate mixture of sludge and cement.

In December 1992, Rockwell moved to dismiss Stone's action for lack of subject-matter jurisdiction, arguing that the action was based on publicly disclosed allegations and that Stone was not an original source. The District Court denied the motion because, in its view, "Stone had direct and independent knowledge that Rockwell's compensation was linked to its compliance with environmental, health and safety regulations and that it allegedly concealed its deficient performance so that it would continue to receive payments." App. to Pet. for Cert. 61a.

The Government initially declined to intervene in Stone's action, but later reversed course, and in November 1996, the District Court granted the Government's intervention. Several weeks later, at the suggestion of the District Court,

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(Hazardous Waste Management Act), 25–8–201 (Water Quality Control Act), 25–11–101 (Radiation Control), 29–22–101 (Hazardous Substance Incidents), 25–5–503 (1982), 25–8–506, 25–8–608 (1982 and Supp. 1988), 25–15–308 through 25–15–310, and 29–22–108 (1982); the Occupational Safety and Health Act of 1970, 29 U. S. C. §651 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U. S. C. §2011 *et seq.*; the Energy Reorganization Act of 1974, 42 U. S. C. §5801 *et seq.*; the Water Pollution Prevention and Control Act, 33 U. S. C. §1251 *et seq.*; the Clean Air Act, 42 U. S. C. §7401 *et seq.*; the Safe Drinking Water Act, 42 U. S. C. §300f *et seq.*; and regulations promulgated under these statutes.

the Government and Stone filed a joint amended complaint. As relevant here, the amended complaint alleged that Rockwell violated RCRA by storing leaky pondcrete blocks, but did not allege that any defect in the piping system (as predicted by Stone) caused insolid pondcrete.[4] Respondents clarified their allegations even further in a statement of claims which became part of the final pretrial order and which superseded their earlier pleadings. This said that the pondcrete's insolidity was due to "an incorrect cement/sludge ratio used in pondcrete operations, as well as due to inadequate process controls and inadequate inspection procedures." App. 470. It continued:

> "During the winter of 1986, Rockwell replaced its then pondcrete foreman, Norman Fryback, with Ron Teel. Teel increased pondcrete production rates in part by, among other things, reducing the amount of cement added to the blocks. Following the May 23, 1988 spill, Rockwell acknowledged that this reduced cement-to-sludge ratio was a major contributor to the existence of insufficiently solid pondcrete blocks on the storage pads." *Id.*, at 476–477.

The statement of claims again did not mention the piping problem asserted by Stone years earlier.

Respondents' False Claims Act claims went to trial in 1999. None of the witnesses Stone had identified during discovery as having relevant knowledge testified at trial. And none of the documents Stone provided to the Government with his confidential disclosure statement was introduced in evidence at trial. Nor did respondents allege at trial that the defect in the piping system predicted by Stone caused insolid pondcrete. To the contrary, during

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[4] In addition to the pondcrete allegations, respondents charged Rockwell with concealing problems with "saltcrete" (a mixture of cement and salt from liquid waste treatment processes) and "spray irrigation" (a method of disposing of waste water generated by the sewage treatment plant at Rocky Flats).

closing arguments both Stone's counsel and the Government's counsel repeatedly explained to the jury that the ponderete failed because Rockwell's new foreman used an insufficient cement-to-sludge ratio in an effort to increase ponderete production.

The verdict form divided the False Claims Act count into several different claims corresponding to different award-fee periods. The jury found in favor of respondents for the three periods covering the ponderete allegations (April 1, 1987, to September 30, 1988), and found for Rockwell as to the remaining periods. The jury awarded damages of $1,390,775.80, which the District Court trebled pursuant to 31 U. S. C. § 3729(a).

Rockwell filed a postverdict motion to dismiss Stone's claims under § 3730(e)(4), arguing that the claims were based on publicly disclosed allegations and that Stone was not an original source. In response, Stone acknowledged that his successful claims were based on publicly disclosed allegations, but asserted original-source status. The District Court agreed with Stone. The United States Court of Appeals for the Tenth Circuit affirmed in relevant part, but remanded the case for the District Court to determine whether Stone had disclosed his information to the Government before filing his *qui tam* action, as § 3730(e)(4)(B) required. On remand, the District Court found that Stone had produced the 1982 engineering order to the Government, but that the order was insufficient to communicate Stone's allegations. The District Court also found that Stone had not carried his burden of proving that he orally informed the FBI about his allegations before filing suit. On appeal, the Tenth Circuit disagreed with the District Court's conclusion and held (over the dissent of Judge Briscoe) that the 1982 engineering order sufficed to carry Stone's burden of persuasion. 92 Fed. Appx. 708. We granted certiorari, 548 U. S. 941 (2006), to decide whether Stone was an original source.

II

Section 3730(e)(4)(A) provides:

> "No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information." (Footnote omitted.)

As discussed above, § 3730(e)(4)(B) defines "original source" as "an individual who [1] has direct and independent knowledge of the information on which the allegations are based and [2] has voluntarily provided the information to the Government before filing an action under this section which is based on the information." As this case comes to the Court, it is conceded that the claims on which Stone prevailed were based upon publicly disclosed allegations within the meaning of § 3730(e)(4)(A). The question is whether Stone qualified under the original-source exception to the public-disclosure bar.

We begin with the possibility that little analysis is required in this case, for Stone asserts that Rockwell conceded his original-source status. Rockwell responds that it conceded no such thing and that, even had it done so, the concession would have been irrelevant because § 3730(e)(4) is jurisdictional. We agree with the latter proposition. It is true enough that the word "jurisdiction" does not in every context connote subject-matter jurisdiction. Noting that "jurisdiction" is "'a word of many, too many, meanings,'" we concluded in *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83 (1998), that establishing the elements of an offense was not made a jurisdictional matter merely because

the statute creating the cause of action was phrased as providing for "jurisdiction" over such suits. *Id.*, at 90 (quoting *United States* v. *Vanness*, 85 F. 3d 661, 663, n. 2 (CADC 1996)). Here, however, the issue is not whether casting the creation of a cause of action in jurisdictional terms somehow limits the general grant of jurisdiction under which that cause of action would normally be brought, but rather whether a clear and explicit *withdrawal* of jurisdiction withdraws jurisdiction. It undoubtedly does so. Just last Term we stated that, "[i]f the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional, then courts and litigants will be duly instructed and will not be left to wrestle with the issue." *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 515–516 (2006) (footnote omitted). Here the jurisdictional nature of the original-source requirement is clear *ex visceribus verborum*. Indeed, we have already stated that §3730(e)(4) speaks to "the power of a particular court" as well as "the substantive rights of the parties." *Hughes Aircraft Co.* v. *United States ex rel. Schumer*, 520 U. S. 939, 951 (1997).

Stone's contrary position rests entirely on dicta from a single Court of Appeals decision, see *United States ex rel. Fallon* v. *Accudyne Corp.*, 97 F. 3d 937, 940–941 (CA7 1996). *Accudyne* thought it significant that jurisdiction over False Claims Act cases is conferred by 28 U. S. C. §§ 1331 and 1345 (the federal-question and United-States-as-plaintiff provisions of the Judicial Code) and 31 U. S. C. § 3732(a) (the provision of the False Claims Act establishing federal-court venue and conferring federal-court jurisdiction over related state-law claims), rather than § 3730, which is the "section" referenced in § 3730(e)(4). To eliminate jurisdiction, the court believed, it is those jurisdiction-conferring sections that would have to be referenced. We know of nothing in logic or authority to support this. The jurisdiction-removing provision here does not say "no court shall have

jurisdiction under this section," but rather "no court shall have jurisdiction *over an action* under this section." That is surely the most natural way to achieve the desired result of eliminating jurisdiction over a category of False Claims Act actions—rather than listing all the conceivable provisions of the United States Code whose conferral of jurisdiction is being eliminated. (In addition to the provisions cited by the *Accudyne* court, one might also have to mention the diversity-jurisdiction provision, 28 U. S. C. § 1332, and the supplemental-jurisdiction provision, § 1367.) *Accudyne* next observed that the public-disclosure bar limits only *who* may speak for the United States on a subject and *who* if anyone gets a financial reward, not the "categories of disputes that may be resolved (a real 'jurisdictional' limit)." 97 F. 3d, at 941. But this is a classic begging of the question, which is precisely whether there has been removed from the courts' jurisdiction that category of disputes consisting of False Claims Act *qui tam* suits based on publicly disclosed allegations as to which the relator is not an original source of the information. Nothing prevents Congress from defining the "category" of excluded suits in any manner it wishes. See, *e. g.*, 28 U. S. C. § 1500 (no jurisdiction over "any claim for or in respect to which the plaintiff . . . has pending in any other court any suit . . . against the United States"). Lastly, *Accudyne* asserted that "the Supreme Court had held that a similar reference to jurisdiction in the Norris-LaGuardia Act, 29 U. S. C. §§ 101, 104, limits remedies rather than subject-matter jurisdiction." 97 F. 3d, at 941 (citing *Burlington Northern R. Co.* v. *Maintenance of Way Employes*, 481 U. S. 429, 444–446 (1987)). But the language of the Norris-LaGuardia Act is in fact *not* similar. It provides that "[n]o court of the United States shall have jurisdiction *to issue any restraining order or temporary or permanent injunction* in any case involving or growing out of any labor dispute . . . ." 29 U. S. C. § 104 (emphasis added). It is fa-

cially a limitation upon the relief that can be accorded, not a removal of jurisdiction over "any case involving or growing out of a labor dispute." Here, by contrast, the text says "[n]o court shall have jurisdiction over an action under this section."

Whether the point was conceded or not, therefore, we may, and indeed must, decide whether Stone met the jurisdictional requirement of being an original source.

III

We turn to the first requirement of original-source status, that the relator have "direct and independent knowledge of the information on which the allegations are based." 31 U. S. C. §3730(e)(4)(B). Because we have not previously addressed this provision, several preliminary questions require our attention.

A

First, does the phrase "information on which the allegations are based" refer to the information on which the *relator's allegations* are based or the information on which the *publicly disclosed allegations* that triggered the public-disclosure bar are based? The parties agree it is the former. See Brief for Petitioners 26, n. 13; Brief for United States 24, and n. 8; Brief for Respondent Stone 15, 21. But in view of our conclusion that §3730(e)(4) is jurisdictional, we must satisfy ourselves that the parties' position is correct.

Though the question is hardly free from doubt,[5] we agree that the "information" to which subparagraph (B) speaks is the information upon which the relators' allegations are

[5]The Courts of Appeals have divided over the question. See *United States ex rel. Laird* v. *Lockheed Martin Eng. & Science Servs. Co.*, 336 F. 3d 346, 353–355 (CA5 2003) (describing the Courts of Appeals' divergent approaches). Only by demoting the actual text of §3730(e)(4) to a footnote and then paraphrasing the statute in a way that assumes his conclusion can JUSTICE STEVENS assert (without further analysis) that the statute's meaning is "plain." See *post*, at 479–480 (dissenting opinion).

based. To begin with, subparagraph (B) standing on its own suggests that disposition. The relator must have "direct and independent knowledge of the information on which the allegations are based," and he must "provid[e] the information to the Government before filing an action under this section which is based on the information." Surely the information one would expect a relator to "provide to the Government before filing an action . . . based on the information" is the information underlying the relator's claims.

Subparagraph (A) complicates matters. As described earlier, it bars actions based on the "public disclosure of allegations or transactions" and provides an exception for cases brought by "an original source of the information." If the allegations referred to in subparagraph (B)'s phrase requiring "direct and independent knowledge of the information on which the allegations are based" are the same "allegations" referred to in subparagraph (A), then original-source status would depend on knowledge of information underlying the publicly disclosed allegations. The principal textual difficulty with that interpretation is that subparagraph (A) does not speak simply of "allegations," but of "allegations or transactions." Had Congress wanted to link original-source status to information underlying the public disclosure, it would surely have used the identical phrase, "allegations or transactions"; there is no conceivable reason to require direct and independent knowledge of publicly disclosed allegations but not of publicly disclosed transactions.

The sense of the matter offers strong additional support for this interpretation. Section 3730(e)(4)(A) bars actions based on publicly disclosed allegations whether or not the information on which those allegations are based has been made public. It is difficult to understand why Congress would care whether a relator knows about the information underlying a publicly disclosed allegation (*e. g.*, what a confidential source told a newspaper reporter about insolid pondcrete) when the relator has direct and independent

knowledge of different information supporting the same allegation (*e. g.*, that a defective process would inevitably lead to insolid ponderete). Not only would that make little sense, it would raise nettlesome procedural problems, placing courts in the position of comparing the relator's information with the often *unknowable* information on which the public disclosure was based. Where that latter information has not been disclosed (by reason, for example, of a reporter's desire to protect his source), the relator would presumably be out of court. To bar a relator with direct and independent knowledge of information underlying his allegations just because no one can know what information underlies the similar allegations of some other person simply makes no sense.

The contrary conclusion of some lower courts rests on the following logic: The term "information" in subparagraph (B) must be read in tandem with the term "information" in subparagraph (A), and the term "information" in subparagraph (A) refers to the information on which the publicly disclosed allegations are based. See, *e. g.*, *United States ex rel. Laird* v. *Lockheed Martin Eng. & Science Servs. Co.*, 336 F. 3d 346, 354 (CA5 2003). The major premise of this reasoning seems true enough: "information" in (A) and (B) means the same thing. The minor premise, however—that "information" in (A) refers to the information underlying the publicly disclosed allegations or transactions—is highly questionable. The complete phrase at issue is "unless . . . the person bringing the action is an original source of the information." It seems to us more likely (in light of the analysis set forth above) that the information in question is the information *underlying the action* referred to a few words earlier, to wit, the action "based upon the public disclosure of allegations or transactions" referred to at the beginning of the provision. On this interpretation, "information" in subparagraph (A) and "information on which the allegations are based" in subparagraph (B) are one and the same, viz., information underlying the allegations of the relator's action.

B

Having determined that the phrase "information on which the allegations are based" refers to the relator's allegations and not the publicly disclosed allegations, we confront more textual ambiguity: *Which* of the relator's allegations are the relevant ones? Stone's allegations changed during the course of the litigation, yet he asks that we look only to his original complaint. Rockwell argues that Stone must satisfy the original-source exception through all stages of the litigation.

In our view, the term "allegations" is not limited to the allegations of the original complaint. It includes (at a minimum) the allegations in the original complaint *as amended*. The statute speaks not of the allegations in the "original complaint" (or even the allegations in the "complaint"), but of the relator's "allegations" *simpliciter*. Absent some limitation of §3730(e)(4)'s requirement to the relator's *initial* complaint, we will not infer one. Such a limitation would leave the relator free to plead a trivial theory of fraud for which he had some direct and independent knowledge and later amend the complaint to include theories copied from the public domain or from materials in the Government's possession. Even the Government concedes that new allegations regarding a fundamentally different fraudulent scheme require reevaluation of the court's jurisdiction. See Brief for United States 40; Tr. of Oral Arg. 40.

The rule that subject-matter jurisdiction "depends on the state of things at the time of the action brought," *Mollan* v. *Torrance*, 9 Wheat. 537, 539 (1824), does not suggest a different interpretation. The state of things and the originally alleged state of things are not synonymous; demonstration that the original allegations were false will defeat jurisdiction. *Anderson* v. *Watt*, 138 U. S. 694, 701 (1891); *Morris* v. *Gilmer*, 129 U. S. 315, 326 (1889). So also will the withdrawal of those allegations, unless they are replaced by others that establish jurisdiction. Thus, when a plaintiff files a

complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction. See *Wellness Community-Nat.* v. *Wellness House*, 70 F. 3d 46, 49 (CA7 1995); *Boelens* v. *Redman Homes, Inc.*, 759 F. 2d 504, 508 (CA5 1985).[6]

Here, we have not only an amended complaint, but a final pretrial order that superseded all prior pleadings and "controll[ed] the subsequent course of the action," Fed. Rule Civ. Proc. 16(e). See *Curtis* v. *Loether*, 415 U. S. 189, 190, n. 1 (1974) (where a claim was not included in the complaint, but was included in the pretrial order, "it is irrelevant that the pleadings were never formally amended" (citing Fed. Rules Civ. Proc. 15(b), 16)); *Wilson* v. *Muckala*, 303 F. 3d 1207, 1215 (CA10 2002) ("[C]laims, issues, defenses, or theories of damages not included in the pretrial order are waived even if they appeared in the complaint and, conversely, the inclusion of a claim in the pretrial order is deemed to amend any previous pleadings which did not include that claim"); *Syrie* v. *Knoll Int'l*, 748 F. 2d 304, 308 (CA5 1984) ("[I]ncorporation of a [new] claim into the pre-trial order . . . amends the previous pleadings to state [the new] claim"). In these circumstances, we look to the allegations as amended—here, the statement of claims in the final pretrial order—to determine original-source status.

The Government objects that this approach risks driving a wedge between the Government and relators. It worries that future relators might decline to "acquiesc[e]" in the Government's tactical decision to narrow the claims in a case if

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[6] It is true that, when a defendant removes a case to federal court based on the presence of a federal claim, an amendment eliminating the original basis for federal jurisdiction generally does not defeat jurisdiction. See *Carnegie-Mellon Univ.* v. *Cohill*, 484 U. S. 343, 346, 357 (1988); *St. Paul Mercury Indemnity Co.* v. *Red Cab Co.*, 303 U. S. 283, 293 (1938). But removal cases raise forum-manipulation concerns that simply do not exist when it is the *plaintiff* who chooses a federal forum and then pleads away jurisdiction through amendment.

that would eliminate jurisdiction with respect to the relator. Brief for United States 44. Even if this policy concern were valid, it would not induce us to determine jurisdiction on the basis of whether the relator is an original source of information underlying allegations that he no longer makes.

IV

Judged according to the principles set forth above, Stone's knowledge falls short. The only false claims ultimately found by the jury (and hence the only ones to which our jurisdictional inquiry is pertinent to the outcome) involved false statements with respect to environmental, safety, and health compliance over a 1½-year period between April 1, 1987, and September 30, 1988. As described by Stone and the Government in the final pretrial order, the only pertinent problem with respect to this period of time for which Stone claimed to have direct and independent knowledge was insolid pondcrete. Because Stone was no longer employed by Rockwell at the time, he did not know that the pondcrete was insolid; he did not know that pondcrete storage was even subject to RCRA; he did not know that Rockwell would fail to remedy the defect; he did not know that the insolid pondcrete leaked while being stored on-site; and, of course, he did not know that Rockwell made false statements to the Government regarding pondcrete storage.

Stone's prediction that the pondcrete would be insolid because of a flaw in the piping system does not qualify as "direct and independent knowledge" of the pondcrete defect. Of course a *qui tam* relator's misunderstanding of *why* a concealed defect occurred would normally be immaterial as long as he knew the defect actually existed. But here Stone did not *know* that the pondcrete failed; he *predicted* it. Even if a prediction can qualify as direct and independent knowledge in some cases (a point we need not address), it assuredly does not do so when its premise of cause and effect is wrong.

Stone's prediction was a failed prediction, disproved by Stone's own allegations. As Stone acknowledged, Rockwell was able to produce "concrete hard" ponderete using the machinery Stone said was defective. According to respondents' allegations in the final pretrial order, the insolidity problem was caused by a new foreman's reduction of the cement-to-sludge ratio in the winter of 1986, long after Stone had left Rocky Flats.

Stone counters that his original-source status with respect to his spray-irrigation claim (which related to a time period different from that for his ponderete claim, App. 492) provided jurisdiction with respect to all of his claims. We disagree. Section 3730(e)(4) does not permit jurisdiction in gross just because a relator is an original source with respect to some claim. We, along with every court to have addressed the question, conclude that § 3730(e)(4) does not permit such claim smuggling. See *United States ex rel. Merena* v. *SmithKline Beecham Corp.*, 205 F. 3d 97, 102 (CA3 2000); *Hays* v. *Hoffman*, 325 F. 3d 982, 990 (CA8 2003); *Wang ex rel. United States* v. *FMC Corp.*, 975 F. 2d 1412, 1415–1416, 1420 (CA9 1992). As then-Judge Alito explained, "[t]he plaintiff's decision to join all of his or her claims in a single lawsuit should not rescue claims that would have been doomed by section (e)(4) if they had been asserted in a separate action. And likewise, this joinder should not result in the dismissal of claims that would have otherwise survived." *SmithKline Beecham*, *supra*, at 102.

Because Stone did not have direct and independent knowledge of the information upon which his allegations were based, we need not decide whether Stone met the second requirement of original-source status, that he have voluntarily provided the information to the Government before filing his action.

V

Respondents contend that even if Stone failed the original-source test as to his ponderete allegations, the Gov-

ernment's intervention in his case provided an independent basis of jurisdiction. Section 3730(e)(4)(A) permits jurisdiction over an action based on publicly disclosed allegations or transactions if the action is "brought by the Attorney General." Respondents say that any inquiry into Stone's original-source status with respect to amendments to the complaint was unnecessary because the Government had intervened, making this an "action brought by the Attorney General."[7] Even assuming that Stone was an original source of allegations in his initial complaint, we reject respondents' "intervention" argument.

The False Claims Act contemplates two types of actions. First, under § 3730(a), "[i]f the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person." Second, under § 3730(b), "[a] person may bring an action for a violation of section 3729 for the person and for the United States Government." When a private person brings an action under § 3730(b), the Government may elect to "proceed with the action," § 3730(b)(4)(A), or it may "declin[e] to take over the action, in which case the person bringing the action shall have the right to conduct the action," § 3730(b)(4)(B). The statute thus draws a sharp distinction between actions brought by the Attorney General under § 3730(a) and actions brought by a private person under § 3730(b). An action brought by a private person does not become one brought by the Government just because the Government intervenes and elects to "proceed with the action." Section 3730 elsewhere refers to the Government's "proceed[ing] with an action brought by a person under subsection (b)"—which makes crystal clear the distinction between actions brought by the Government and actions

[7] The Government includes a significant caveat: In its view, intervention does not cure any pre-existing defects in Stone's initial complaint; it only cures defects resulting from amendments to the pleadings.

brought by a relator where the Government intervenes but does not oust the relator. §3730(d).

Does this conclusion cast into doubt the courts' jurisdiction with respect to the Government as well? After all, §3730(e)(4)(A) bars jurisdiction over any action brought under §3730, as this one was, unless the action is brought (1) by the Attorney General or (2) by an original source; and we have concluded that this is brought by neither. Not even petitioners have suggested the bizarre result that the Government's judgment must be set aside. It is readily enough avoided, as common sense suggests it must be, by holding that an action originally brought by a private person, which the Attorney General has joined, becomes an action brought by the Attorney General once the private person has been determined to lack the jurisdictional prerequisites for suit. The outcome would be similar to that frequently produced in diversity-jurisdiction cases, where the "courts of appeals . . . have the authority to cure a jurisdictional defect by dismissing a dispensable nondiverse party." *Grupo Dataflux* v. *Atlas Global Group, L. P.*, 541 U. S. 567, 573 (2004) (citing *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U. S. 826, 837 (1989)); see *United States Steel Corp.* v. *EPA*, 614 F. 2d 843, 845 (CA3 1979) ("[T]here are instances when an intervenor's claim does not rise and fall with the claim of the original party"); 7C C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §1920, p. 491 (2d ed. 1986) ("[A]n intervenor can proceed to decision after a dismissal of the original action . . . if there are independent grounds for jurisdiction of the intervenor's claim"). What is cured here, by the jurisdictional ruling regarding Stone's claim, is the characterization of the action as one brought by an original source. The elimination of Stone leaves in place an action pursued only by the Attorney General, that can reasonably be regarded as being "brought" by him for purposes of §3730(e)(4)(A).

* * *

We hold that the District Court lacked jurisdiction to enter judgment in favor of Stone. We reverse the Tenth Circuit's judgment to the contrary.

It is so ordered.

JUSTICE BREYER took no part in the consideration or decision of this case.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, dissenting.

Any private citizen may bring an action to enforce the False Claims Act, 31 U. S. C. §§3729–3733, unless the information on which his allegations are based is already in the public domain. Even if the information is publicly available, however, the citizen may still sue if he was an "original source" of that information. §3730(e)(4)(A) ("No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions . . . unless the action is brought by the Attorney General or the person bringing the action is an original source of the information"). Because I believe the Court has misinterpreted these provisions to require that an "original source" in a *qui tam* action have knowledge of the actual facts underlying the allegations on which he may ultimately prevail, I respectfully dissent.

In my view, a plain reading of the statute's provisions—specifically, §§3730(e)(4)(A) and (B)—makes clear that it is the information underlying the publicly disclosed allegations, not the information underlying the allegations in the relator's complaint (original or amended), of which the relator must be an original source.[1] Moreover, the statute's use of

[1] Section 3730(e)(4)(A) states:

"No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil,

the article "an," rather than "the," in describing the original source indicates that the relator need not be the *sole* source of the information.

By contrast, the majority's approach suggests that the relator must have knowledge of actual facts supporting the theory ultimately proved at trial—in other words, knowledge of the information underlying the prevailing claims. See *ante*, at 475 (limiting the relevant jurisdictional inquiry to those "false claims ultimately found by the jury"). I disagree. Such a view is not supported by the statute, which requires only that the relator have "direct and independent knowledge" of the information on which the publicly disclosed allegations are based and that the relator provide such information to the Government in a timely manner. As I read the statute, the jurisdictional inquiry focuses on the facts in the public domain at the time the action is commenced. If the process of discovery leads to amended theories of recovery, amendments to the original complaint would not affect jurisdiction that was proper at the time of the original filing.[2]

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or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information." (Footnote omitted.)

Section 3730(e)(4)(B) then states:

"For purposes of this paragraph, 'original source' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information."

[2]The majority's approach requires courts to reevaluate jurisdiction over a *qui tam* action brought by an original source every time the complaint is amended. Such an approach, the Government has argued, will interfere with its ability to tailor the claims advanced as it sees appropriate. By contrast, under the approach I would adopt, the jurisdictional inquiry relates only to whether the relator was an original source of the informa-

In this case, as the Court points out, the fact that Rockwell was storing thousands of insolid ponderete blocks at the Rocky Flats facility had been publicly disclosed by the news media before Stone filed this lawsuit. *Ante*, at 461, 462–463. In my view, the record establishes that Stone was an original source of the allegations publicly disclosed by the media in June 1989, even though he thought that the deterioration of the ponderete blocks would be caused by poor engineering rather than a poor formula for the mixture. The search warrant that was executed on June 6, 1989, and the Federal Bureau of Investigation (FBI) affidavit that was released to the news media on June 9, 1989, were both based, in part, on interviews with Stone and on information Stone had provided to the Government, including the 1982 Engineering Order.

With respect to earlier media coverage of the ponderete leakage discovery in May 1988, however, Stone's status as an original source is less obvious. Stone first went to the FBI with allegations of Rockwell's environmental violations in March 1986. App. 180. He subsequently met with several FBI agents over the course of several years. *Id.*, at 180–182. During those meetings he provided the FBI with thousands of pages of documents, including the Engineering Order, in which he predicted that the ponderete system design would not work. On the basis of that record, it seems likely that Stone (1) had "direct and independent knowledge of the information on which the [publicly disclosed] allegations [we]re based" and (2) voluntarily provided such information to the Government before filing suit. It is, however, his burden to establish that he did so. Because there has been no finding as to whether Stone was an original source

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tion underlying the public disclosures, which can easily be determined when an action is filed and need not be revisited during later stages of the litigation.

as to those public disclosures, I would vacate and remand for a determination whether Stone was in fact an original source of the allegations publicly disclosed by the media in 1988 and 1989.

Syllabus

LIMTIACO, ATTORNEY GENERAL OF GUAM *v.* CAMACHO, GOVERNOR OF GUAM

CERTIORARI TO THE SUPREME COURT OF GUAM

No. 06–116. Argued January 8, 2007—Decided March 27, 2007

The Guam Legislature authorized the Governor to issue bonds to fund the Territory's continuing obligations, but Guam's attorney general refused to sign the necessary contracts, concluding that issuance would violate the debt-limitation provision of Guam's Organic Act, which limits the Territory's public indebtedness to 10 percent of the "aggregate tax valuation of the property in Guam," 48 U. S. C. § 1423a. The Governor sought a declaration from the Guam Supreme Court that issuance would not violate the provision, calculating the debt limitation based on the appraised value of property in Guam. Agreeing, the Supreme Court rejected the attorney general's argument to base the limitation on assessed value. The Ninth Circuit granted the attorney general's certiorari petition, but while the appeal was pending, Congress removed the Circuit's jurisdiction over appeals from Guam. Relying on its holding in *Santos* v. *Guam*, that Congress had stripped it of jurisdiction over pending appeals, the court dismissed the appeal. The attorney general then filed a petition for certiorari in this Court, even though it was more than 90 days after the Guam Supreme Court's judgment.

Held:

1. The Guam Supreme Court's judgment did not become final, for purposes of this Court's review, until the Ninth Circuit issued its order dismissing the appeal. Certiorari petitions must be filed "within 90 days after the entry of," 28 U. S. C. § 2101(c), a lower court's "genuinely final judgment," *Hibbs* v. *Winn*, 542 U. S. 88, 98. In some cases, the actions of a party or a lower court suspend the finality of a judgment by "rais[ing] the question whether the court will modify the judgment and alter the parties' rights." *Ibid.* By granting the petition for certiorari, the Ninth Circuit raised that possibility and thus suspended the finality of the Guam Supreme Court's judgment. Until the Circuit issued its order dismissing the case, the appeal remained pending, and the finality of the judgment remained suspended. Contrary to the Governor's arguments, the judgment was not made final either when Congress enacted the jurisdiction-depriving statute or when the Ninth Circuit decided *Santos*. This holding is limited to the unique procedural circumstances here. Pp. 487–488.

Syllabus

2. Guam's debt limitation must be calculated according to the assessed valuation of property in the Territory. The term "tax valuation" most naturally means the value to which the tax rate is applied. It therefore means "assessed valuation"—a term consistently defined as a valuation of property for tax purposes. Appraised value is simply market value, which may or may not relate to taxation. The Guam Supreme Court's contrary interpretation—that "tax" limits the kinds of property qualifying for inclusion in the debt-limitation calculation—impermissibly rearranges the statutory language. "Tax" modifies "valuation," not "property." Thus, "tax valuation" refers to the type of valuation to be conducted, not the object that is valued. The court also erred in reasoning that, because the Virgin Islands' debt-limitation provision explicitly refers to "assessed value," Congress must have intended to base Guam's limitation on some other value. Congress' rejection of "assessed" says no more than its rejection of "actual" or "appraised," terms it could have used had it meant actual, market, or appraised value. This Court's interpretation comports with most States' practice of fixing the debt limitations of municipalities to assessed valuation. States use clear language when departing from this approach, but Congress has not done so here. The Governor's additional arguments—that this interpretation would result in no debt limitation at all because Guam may arbitrarily set its assessment rate above 100 percent of market value, and that this Court owes deference to the Guam Supreme Court's interpretation of the Organic Act—are not persuasive. Pp. 488–492.

Reversed and remanded.

THOMAS, J., delivered the opinion for a unanimous Court with respect to Part II, and the opinion of the Court with respect to Parts I, III, and IV, in which ROBERTS, C. J., and SCALIA, KENNEDY, and BREYER, JJ., joined. SOUTER, J., filed an opinion concurring in part and dissenting in part, in which STEVENS, GINSBURG, and ALITO, JJ., joined, *post*, p. 492.

Seth P. Waxman argued the cause for petitioner. With him on the briefs were *Randolph D. Moss* and *Jonathan G. Cedarbaum*.

Beth S. Brinkmann argued the cause for respondent. With her on the brief were *Seth M. Galanter*, *Seth M. Hufstedler*, *Shirley M. Hufstedler*, *Arthur B. Clark*, *Rodney J. Jacob*, *Daniel M. Benjamin*, *Kathleen V. Fisher*, and *Arne D. Wagner*.

JUSTICE THOMAS delivered the opinion of the Court.

The Legislature of Guam authorized Guam's Governor to issue bonds to fund the Territory's continuing obligations. Concluding that the bonds would violate the debt-limitation provision of the Organic Act of Guam, § 11, 64 Stat. 387, as amended, 48 U. S. C. § 1423a, the attorney general[1] of Guam refused to sign contracts necessary to issue the bonds. In response, the Governor sought a declaration from the Guam Supreme Court that issuance of the bonds would not violate the Organic Act's debt limitation. The Guam Supreme Court held that § 1423a limits Guam's allowed indebtedness to 10 percent of the appraised valuation, not the assessed valuation, of taxable property in Guam. We granted certiorari to decide whether Guam's debt limitation must be calculated according to the assessed or the appraised valuation of property in Guam. We hold that it must be calculated based on the assessed valuation.

I

In 2003, Guam lacked sufficient revenues to pay its obligations. To supplement revenues, the Guam Legislature authorized the Governor to issue bonds worth approximately $400 million. See Guam Pub. L. 27–019. The Governor signed the new legislation and prepared to issue the bonds. However, under Guam law, Guam's attorney general must review and approve all government contracts prior to their execution. Guam Code Ann., Tit. 5, § 22601 (1996). The attorney general concluded that issuance of the bonds would raise the Territory's debt above the level authorized by Guam's Organic Act. See 48 U. S. C. § 1423a (prohibiting debt "in excess of 10 per centum of the aggregate tax valuation of the property in Guam"). He therefore refused to approve the bond contracts.

[1] At the time suit was filed, Douglas Moylan served as Guam's attorney general. Alicia Limtiaco has since been elected to the position, and she continues the case in Moylan's place.

In response, the Governor sought a declaration from the Guam Supreme Court that issuance of the authorized bonds would not cause Guam's debt to exceed the debt limitation. That determination turned, in part, on the meaning of the phrase "aggregate tax valuation" in Guam's Organic Act. The attorney general calculated the debt limitation as 10 percent of the assessed valuation of property in Guam. But the Governor calculated the debt limitation as 10 percent of the appraised valuation. Because Guam assesses property at 35 percent of its appraised value, Guam Code Ann., Tit. 11, § 24102(f), the attorney general's interpretation resulted in a much lower debt limit. The Guam Supreme Court agreed with the Governor and held that 48 U. S. C. § 1423a sets the debt limitation at 10 percent of the appraised valuation of property in Guam.

The attorney general filed a petition for certiorari in the United States Court of Appeals for the Ninth Circuit. See § 1424–2 (granting Ninth Circuit jurisdiction over appeals from Guam). The Court of Appeals granted the petition in October 2003. While the appeal was pending, Congress amended § 1424–2 and removed the language that vested jurisdiction in the Ninth Circuit over appeals from Guam. See § 2, 118 Stat. 2208, 48 U. S. C. § 1424–2 (2000 ed., Supp. IV). In *Santos* v. *Guam*, 436 F. 3d 1051 (Jan. 3, 2006), the Court of Appeals addressed the effect of the amendment on its jurisdiction. The court held that Congress had stripped its jurisdiction not only prospectively, but also for pending appeals. *Id.*, at 1054. Citing *Santos*, the Ninth Circuit dismissed the attorney general's appeal in this case on March 6, 2006. See App. to Pet. for Cert. 39a.

The attorney general then filed a petition for certiorari in this Court. By statute, certiorari petitions must be filed "within ninety days after the entry of . . . judgment" in a lower court. 28 U. S. C. § 2101(c). The attorney general filed his petition more than 90 days after the judgment from

which he appeals—that of the Guam Supreme Court—was entered. Accordingly, when we granted certiorari in this case, 548 U. S. 942 (2006), we directed the parties to address both the question presented by petitioner and whether the filing of a petition for certiorari or the pendency of a writ of certiorari before the Court of Appeals suspended the finality of the Guam Supreme Court's judgment for purposes of the 90-day period set out in §2101(c).

II

Only "a genuinely final judgment" will trigger §2101(c)'s 90-day period for filing a petition for certiorari in this Court. *Hibbs* v. *Winn*, 542 U. S. 88, 98 (2004). In most cases, the 90-day period begins to run immediately upon entry of a lower court's judgment. In some cases, though, the actions of a party or a lower court suspend the finality of a judgment and thereby reset the 90-day "clock." *Ibid.* For instance, the timely filing of a petition for rehearing with the lower court or a lower court's appropriate decision to rehear an appeal may suspend the finality of a judgment by "rais[ing] the question whether the court will modify the judgment and alter the parties' rights." *Ibid.* (citing *Missouri* v. *Jenkins*, 495 U. S. 33, 46 (1990)). So long as that question remains open, "'there is no "judgment" to be reviewed,'" *Hibbs*, *supra*, at 98 (quoting *Jenkins*, *supra*, at 46), and §2101(c)'s 90-day period does not run.

The same reasoning applies here. In 2003, the Court of Appeals appropriately exercised discretionary jurisdiction over the attorney general's appeal. See 48 U. S. C. §1424–2. By granting the petition for certiorari, the Ninth Circuit raised the possibility that it might "modify the judgment" or "alter the parties' rights." *Hibbs*, *supra*, at 98. Thus, the Court of Appeals' grant of certiorari suspended the finality of the Guam Supreme Court's judgment and prevented the 90-day clock from running while the case was pending before

the Court of Appeals. And until the Ninth Circuit issued its order dismissing the case, the appeal remained pending, and the finality of the judgment remained suspended.

The Governor argues that the judgment was made final earlier—either when Congress enacted the statute depriving the Court of Appeals of jurisdiction or when the Court of Appeals decided in *Santos* that the statute applied to pending cases. But when Congress removed the Ninth Circuit's jurisdiction over appeals from Guam, it did not dismiss this appeal. Likewise, when the Ninth Circuit determined in *Santos* that Congress had stripped its jurisdiction over pending appeals, the court did not finally determine the rights of the parties in this case. The jurisdiction-stripping statute and *Santos* may have signaled the Court of Appeals' ultimate dismissal of the appeal, but neither created a final judgment in the still-pending case. The attorney general's appeal remained pending until the Ninth Circuit issued its dismissal order. And the pendency of the appeal continued to "raise the question whether" any further action by the court might affect the relationship of the parties. *Hibbs*, *supra*, at 98. Accordingly, we hold that the judgment of the Guam Supreme Court did not become final, for purposes of this Court's review, until the Court of Appeals issued its order dismissing the appeal.

We emphasize that our holding is limited to the unique procedural circumstances presented here. Specifically, our holding does not extend to improperly filed appeals or filings used as delaying tactics. See *Morse* v. *United States*, 270 U. S. 151 (1926) (holding that second application for leave to file motion for new trial did not suspend the finality of the lower court's judgment).

III

Having determined that we have jurisdiction, we turn to the merits. As always, we begin with the text of the statute. See *Nebraska Dept. of Revenue* v. *Loewenstein*, 513 U. S. 123, 128 (1994). Guam's Organic Act states that "no

public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam." 48 U. S. C. § 1423a. The present dispute centers on the meaning of the term "tax valuation." In its unmodified form, the word "valuation" means "[t]he estimated worth of a thing." Black's Law Dictionary 1721 (4th ed. 1951) (hereinafter Black's). But as the parties' competing interpretations demonstrate, there are different sorts of valuations. An appraised valuation is the market value of property. See *id.*, at 129 (defining "appraise" as "to fix and state the true value of a thing"). By contrast, an "assessed valuation" is the "[v]alue on each unit of which a prescribed amount must be paid as property taxes." *Id.*, at 149. These two kinds of valuation are related in practice because a property's assessed valuation generally equals some percentage of its appraised valuation. See, *e. g.*, Guam Code Ann., Tit. 11, § 24102(f) (defining "value" as "thirty-five per cent (35%) of the appraised value"). The assessed valuation therefore could, but typically does not, equal the market value of the property.

Though it has no established definition, the term "tax valuation" most naturally means the value to which the tax rate is applied.[2] Were it otherwise, the modifier "tax" would have almost no meaning or a meaning inconsistent with ordinary usage. "Tax valuation" therefore means "assessed valuation"—a term consistently defined as a valuation of property for purposes of taxation. See Black's 149; see also *id.*, at 116 (6th ed. 1990) (defining "assessed valuation" as "[t]he worth or value of property established by taxing authorities on the basis of which the tax rate is applied").

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[2] The Guam Legislature passed a law attempting to define the term "tax valuation." See Guam Code Ann., Tit. 11, § 24102(*l*), available at http://www.guamcourts.org/justicedocs/index.html (as visited Mar. 16, 2007). But that term appears in Guam's Organic Act, which is a federal statute. As the Guam Supreme Court correctly determined, Guam's territorial legislature cannot redefine terms used in a federal statute.

One would not normally refer to a property's appraised valuation as its "tax valuation." Appraised valuation is simply market value. And market value may or may not relate to taxation. Usually market value becomes relevant to taxation only because a specified percentage of market value is the assessed value to which taxing authorities apply the tax rate. It would strain the text to conclude that "tax valuation" means a valuation a step removed from taxation.

The Guam Supreme Court reached a contrary conclusion by interpreting the word "tax" to limit the kinds of property that qualify for inclusion in the debt-limitation calculation. But that interpretation impermissibly rearranges the statutory language. The word "tax" modifies "valuation," not "property." The phrase "tax valuation" therefore refers to the type of valuation to be conducted, not the object that is valued.

The Guam Supreme Court also contrasted 48 U. S. C. § 1423a's language with explicit references to "assessed valuation" in the debt-limitation provision for the Virgin Islands. See § 1403 ("aggregate assessed valuation"). The court reasoned that, by using language in § 1423a that differed from that used in the Virgin Islands' debt-limitation provision, Congress expressed its intent to base Guam's debt limitation on something other than assessed value. We disagree. Certainly, Congress could have used the term "assessed valuation." But if Congress had meant actual, market, or appraised value, it could have used any one of those terms as well. See *N. W. Halsey & Co.* v. *Belle Plaine*, 128 Iowa 467, 104 N. W. 494 (1905) (interpreting debt-limitation provision using phrase "actual value"). Or it could have left the word "valuation" unmodified: State courts interpreting other debt-limitation provisions have understood "valuation," standing alone, to mean the market or cash value of property. See, *e. g.*, *Board of Ed., Rich Cty. School Dist.* v. *Passey*, 122 Utah 102, 104–106, 246 P. 2d 1078, 1079 (1952). At least in

this context, Congress' rejection of "assessed" tells us no more than does its rejection of "actual" or "appraised."

Our interpretation comports with most States' practice of tying the debt limitations of municipalities to assessed valuation. See 15 E. McQuillin, Law of Municipal Corporations § 41:7, p. 422 (3d ed. rev. 2005) ("Most of the constitutional and statutory provisions make the assessed value of the taxable property of the municipality the basis for ascertaining the amount of indebtedness which may be incurred . . . "). States that depart from the majority approach use clear language to do so. See *id.*, at 424–425 ("The standard is generally the assessed value of the property for taxation, rather than the actual value, where the two are different; but where the constitution or statute uses the term 'actual value,' such value governs rather than the taxable value" (citing *N. W. Halsey & Co., supra;* footnote omitted)). Congress has not used such language here. Indeed, as discussed earlier, only a strained reading of "tax valuation" would suggest a departure from the majority approach.

The Governor suggests that our interpretation would result in no debt limitation at all because Guam may arbitrarily set its assessment rate above 100 percent of market value. For two reasons, we think the Governor has overstated this concern. First, most States have long based their debt limitations on assessed value without incident. Second, a strong political check exists; property-owning voters will not fail to notice if the government sets the assessment rate above market value.

Finally, the Governor mistakenly argues that we owe deference to the Guam Supreme Court's interpretation of the Organic Act. It may be true that we accord deference to territorial courts over matters of purely local concern. See *Pernell* v. *Southall Realty*, 416 U. S. 363, 366 (1974) (reviewing District of Columbia Court of Appeals' interpretation of D. C. Code provision). This case does not fit that mold, however. The debt-limitation provision protects both Guamani-

ans and the United States from the potential consequences of territorial insolvency. Thus, this case is not a matter of purely local concern. Of course, decisions of the Supreme Court of Guam, as with other territorial courts, are instructive and are entitled to respect when they indicate how statutory issues, including the Organic Act, apply to matters of local concern. On the other hand, the Organic Act is a federal statute, which we are bound to construe according to its terms.

IV

For the foregoing reasons, we reverse the judgment of the Guam Supreme Court and remand the case for proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE SOUTER, with whom JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE ALITO join, concurring in part and dissenting in part.

I agree that the petition for writ of certiorari was timely, and join Part II of the Court's opinion. I disagree, however, that the phrase "tax valuation" in the Organic Act of Guam, § 11, 64 Stat. 387, as amended, 48 U. S. C. § 1423a, refers unambiguously to assessed value. If I could not go beyond statutory text and the sources relied upon by the Court, a coin toss would be my only way to judgment. But I look to congressional purpose, which points to appraised value as the meaning of the term, leaving me in respectful dissent.

The words "tax valuation" can plausibly be read in either of the ways the parties suggest: as synonymous with assessed value (the way the attorney general and the Court read them), because it is the assessed value to which the tax rate is immediately applied, Guam Code Ann., Tit. 11, §§ 24102(f), 24103 (1996), or as meaning appraised value, because the appraisal is a "valuation" for "tax" purposes. The Court concedes that the term "tax valuation" has no canoni-

cal definition, *ante*, at 489,[1] and says that the term "valuation," standing alone, means "'[t]he estimated worth of a thing,'" *ibid.* (quoting Black's Law Dictionary 1721 (4th ed. 1951); alteration in original). Though taking property's "estimated worth" to be its "tax valuation" would make practical sense, the Court believes that construction would read the word "tax" out of the statute. I do not see the objection, though. Even if we say "valuation" means actual value, the word "tax" has a job to do, by specifying that the valuation in question be the valuation used for tax purposes, thus ruling out an appraisal made solely for the purpose of calculating the debt limitation, with its temptation to indulge in creative accounting when money is tight.[2] But as I said, seeing the legitimacy of this reading just leaves us with two textually plausible constructions.

I see no tie-breaker in comparing Guam's debt limitation with those of other Territories. In each Territory mentioned by the parties, when Congress imposed a territorial debt limitation the assessed value was equal to the actual value of the property.[3] Thus the attorney general can stress

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[1] The phrase "tax valuation" had been used in debt limitations for other Territories, see ch. 34, 41 Stat. 1096 (Puerto Rico); ch. 203, 42 Stat. 599 (Philippines), but in each of those Territories the issue in this case was irrelevant because assessed and appraised values were equal. See *infra* this page and 494, and nn. 3–4.

[2] Though the Court finds the appraised value to be "a step removed from taxation," *ante*, at 490, the connection of the appraised value to the tax ultimately imposed is direct enough. It is true that the tax computation requires multiplying the appraised value by two percentages (first 35 percent to get the assessed value, Guam Code Ann., Tit. 11, § 24102(f) (1996), and then the 0.25 percent tax rate, § 24103) while the assessed value must only be multiplied by a single percentage. But as a practical matter, tying the tax to the assessed value ties it to the appraised value: multiplying the appraised value by 0.0875 percent (35 percent times 0.25 percent) will give you the tax every time.

[3] 48 U. S. C. § 1401a ("[A]ll taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property"); Haw. Rev. Stat., ch. 98, § 1212 (1905), Lodging of Respondent (Doc. 2b) ("[A]ll

the significance of assessed value and argue that because the debt limitation in the other Territories was based on the assessed value, the same should be true for Guam. And the Governor can argue that because the debt limitation in the other Territories was based on the actual value, that should go for Guam, too. Nor is the tie to be broken by arguing that pegging the territorial debt limit to "tax valuation" suggests that this Territory was meant to be treated more conservatively than a limit turning on full value; the suggestion is balanced by the question (without any answer proposed to us), why Congress would have wished a more restrictive (or nominally more restrictive) regime for certain Territories.[4]

Comparing state practices is no help, either. The Court says that "States that depart from the majority approach" of linking debt limitations to assessed value "use clear language to do so," *ante*, at 491, but in the preceding paragraph the majority recognizes that state courts "have understood 'valuation,' standing alone, to mean the market or cash value of property," *ante*, at 490. So it seems a stretch to suggest that state laws offer a clear rule that Congress may be pre-

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real property and all personal property within the Territory shall be subject to an annual tax of one per cent. upon the full cash value of the same"); An Act to Provide Revenue for the People of Porto Rico, and for Other Purposes, Tit. I, §8 (1901), reprinted in Acts and Resolves of the First Legislative Assembly of Porto Rico 47 (1901), Lodging of Respondent (Doc. 3) ("All taxable property shall be valued and assessed at its actual market value"); A Compilation of the Acts of the Philippine Commission, Tit. 10, ch. 56, §336(a) (1908), Lodging of Respondent (Doc. 4) ("[T]he board shall proceed to assess the value of each separate parcel of real estate and the improvements thereon, if any, at their true value in money").

[4] The percentage of the valuation at which the various debt limitations were set likewise provides no basis for inferring that Congress had different intentions for different Territories. When the Organic Act of Guam was passed in 1950, each of the debt limitations in the Territories mentioned in n. 3, *supra*, was also set at 10 percent of the relevant valuation. See 48 U. S. C. §1403 (Virgin Islands); 42 Stat. 116 (Hawaii); ch. 34, 41 Stat. 1096 (Puerto Rico); ch. 203, 42 Stat. 599 (Philippines).

sumed to have understood as background; better to read the state cases as products of the specific wording of their particular limitations and the state history of property taxation. See, *e. g.*, *Phelps* v. *Minneapolis*, 174 Minn. 509, 511–514, 219 N. W. 872, 873–874 (1928) (relying on text of limitation, other related provisions, and history of property taxation); *N. W. Halsey & Co.* v. *Belle Plaine*, 128 Iowa 467, 470–474, 104 N. W. 494, 495–497 (1905) (same). It almost goes without saying that neither side has cited a state case involving language and background the same as Guam's.

In sum, the congressional mind does not emerge from the words "tax valuation" or any settled construction of that phrase. Fortunately, though, the purpose of the legislation does point to a likely reading. The statute itself makes clear that what Congress meant to provide was a practical guarantee against crushing debt on the shoulders of future generations, and insolvency with the inevitable call for a bailout by Congress. See *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.*, 508 U. S. 439, 455 (1993) ("'[L]ook to the [law's] . . . object and policy'" (quoting *United States* v. *Heirs of Boisdoré*, 8 How. 113, 122 (1849))).

The attorney general claims that her reading is a better fit with these objectives because it ties the legislature's ability to incur debt to its willingness to tax. But this is hardly so. Under the attorney general's approach (now the Court's), the Guam Legislature could double the debt limitation without increasing taxes by a single penny, simply by doubling the assessment rate and cutting the tax rate by half.[5]

Although it is arguable that tying the debt ceiling to the assessed value may to some vague degree enhance legislative accountability by requiring action to raise the debt ceil-

[5]The specter of mischief extends to an attempt to set the assessment rate above 100 percent. The Court contends that political or practical constraints would foreclose this maneuver. See *ante*, at 491. After today's decision, I suppose we may find out.

ing as debt piles up, I know of no independent suggestion that the debt limit was designed to operate as a political discouragement, not as a hard cap. It would, after all, have been strange for Congress to set a debt cap to constrain the Guam Legislature, only to leave the limiting figure subject to easy manipulation by the legislature. While I know that actual valuation can be manipulated, too, manipulation of that figure could only be done by officials acting in bad faith and subject to an obvious political or judicial challenge. The Court's approach, by contrast, gives the legislature a green light to subvert its own stated limit with a clear conscience.[6]

The more practical understanding of what must have been intended is a statute tying the debt limitation to Guam's capacity to tax property. The actual, market value of property is the only economic index of Guam's ability to collect property taxes to pay its bills,[7] the only figure under consideration that is fixed in the real world, and the only figure that provides a genuine limitation. This was the figure employed or required by Congress in each of the other Territories mentioned above, see n. 3, *supra*, and I presume that its practical significance was in Congress's mind when it set the debt caps for each of them. I see no reason not to attribute the same practical assessment to Congress in this instance.

I would affirm.

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[6] The attorney general's position would be strengthened if the assessment rate appeared in the Organic Act itself, for then the legislature would lack the power to change it. This state of affairs would be analogous to an assessment rate appearing in a state constitution. See, *e. g.*, Colo. Const., Art. X, §3(1)(b); La. Const., Art. VII, §18(B). But the Organic Act set no assessment rate, leaving that up to the Guam Legislature.

[7] It is not, of course, the only index of Guam's capacity to pay its bills; income taxation is an obvious source of revenue, see 48 U. S. C. §§1421i(a)–(b) (authorizing Guam to collect income tax).

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MASSACHUSETTS ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05–1120. Argued November 29, 2006—Decided April 2, 2007

Based on respected scientific opinion that a well-documented rise in global temperatures and attendant climatological and environmental changes have resulted from a significant increase in the atmospheric concentration of "greenhouse gases," a group of private organizations petitioned the Environmental Protection Agency (EPA) to begin regulating the emissions of four such gases, including carbon dioxide, under §202(a)(1) of the Clean Air Act, which requires that EPA "shall by regulation prescribe . . . standards applicable to the emission of any air pollutant from any class . . . of new motor vehicles . . ., which in [the EPA Administrator's] judgment cause[s], or contribute[s] to, air pollution . . . reasonably . . . anticipated to endanger public health or welfare," 42 U. S. C. §7521(a)(1). The Act defines "air pollutant" to include "any air pollution agent . . . , including any physical, chemical . . . substance . . . emitted into . . . the ambient air." §7602(g). EPA ultimately denied the petition, reasoning that (1) the Act does not authorize it to issue mandatory regulations to address global climate change, and (2) even if it had the authority to set greenhouse gas emission standards, it would have been unwise to do so at that time because a causal link between greenhouse gases and the increase in global surface air temperatures was not unequivocally established. The Agency further characterized any EPA regulation of motor-vehicle emissions as a piecemeal approach to climate change that would conflict with the President's comprehensive approach involving additional support for technological innovation, the creation of nonregulatory programs to encourage voluntary private-sector reductions in greenhouse gas emissions, and further research on climate change, and might hamper the President's ability to persuade key developing nations to reduce emissions.

Petitioners, now joined by intervenor Massachusetts and other state and local governments, sought review in the D. C. Circuit. Although each of the three judges on the panel wrote separately, two of them agreed that the EPA Administrator properly exercised his discretion in denying the rulemaking petition. One judge concluded that the Administrator's exercise of "judgment" as to whether a pollutant could "reasonably be anticipated to endanger public health or welfare,"

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§ 7521(a)(1), could be based on scientific uncertainty as well as other factors, including the concern that unilateral U. S. regulation of motor-vehicle emissions could weaken efforts to reduce other countries' greenhouse gas emissions. The second judge opined that petitioners had failed to demonstrate the particularized injury to them that is necessary to establish standing under Article III, but accepted the contrary view as the law of the case and joined the judgment on the merits as the closest to that which he preferred. The court therefore denied review.

Held:

1. Petitioners have standing to challenge EPA's denial of their rulemaking petition. Pp. 516–526.

(a) This case suffers from none of the defects that would preclude it from being a justiciable Article III "Controvers[y]." See, *e. g.*, *Luther* v. *Borden*, 7 How. 1. Moreover, the proper construction of a congressional statute is an eminently suitable question for federal-court resolution, and Congress has authorized precisely this type of challenge to EPA action, see 42 U. S. C. § 7607(b)(1). Contrary to EPA's argument, standing doctrine presents no insuperable jurisdictional obstacle here. To demonstrate standing, a litigant must show that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that a favorable decision will likely redress that injury. See *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561. However, a litigant to whom Congress has "accorded a procedural right to protect his concrete interests," *id.*, at 573, n. 7—here, the right to challenge agency action unlawfully withheld, § 7607(b)(1)—"can assert that right without meeting all the normal standards for redressability and immediacy," *ibid.* Only one petitioner needs to have standing to authorize review. See *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 52, n. 2. Massachusetts has a special position and interest here. It is a sovereign State and not, as in *Lujan*, a private individual, and it actually owns a great deal of the territory alleged to be affected. The sovereign prerogatives to force reductions in greenhouse gas emissions, to negotiate emissions treaties with developing countries, and (in some circumstances) to exercise the police power to reduce motor-vehicle emissions are now lodged in the Federal Government. Because Congress has ordered EPA to protect Massachusetts (among others) by prescribing applicable standards, § 7521(a)(1), and has given Massachusetts a concomitant procedural right to challenge the rejection of its rulemaking petition as arbitrary and capricious, § 7607(b)(1), petitioners' submissions as they pertain to Massachusetts have satisfied the most demanding standards of the adversarial process. EPA's steadfast refusal to

regulate greenhouse gas emissions presents a risk of harm to Massachusetts that is both "actual" and "imminent," *Lujan*, 504 U. S., at 560, and there is a "substantial likelihood that the judicial relief requested" will prompt EPA to take steps to reduce that risk, *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U. S. 59, 79. Pp. 516–521.

(b) The harms associated with climate change are serious and well recognized. The Government's own objective assessment of the relevant science and a strong consensus among qualified experts indicate that global warming threatens, *inter alia*, a precipitate rise in sea levels, severe and irreversible changes to natural ecosystems, a significant reduction in winter snowpack with direct and important economic consequences, and increases in the spread of disease and the ferocity of weather events. That these changes are widely shared does not minimize Massachusetts' interest in the outcome of this litigation. See *Federal Election Comm'n* v. *Akins*, 524 U. S. 11, 24. According to petitioners' uncontested affidavits, global sea levels rose between 10 and 20 centimeters over the 20th century as a result of global warming and have already begun to swallow Massachusetts' coastal land. Remediation costs alone, moreover, could reach hundreds of millions of dollars. Pp. 521–523.

(c) Given EPA's failure to dispute the existence of a causal connection between manmade greenhouse gas emissions and global warming, its refusal to regulate such emissions, at a minimum, "contributes" to Massachusetts' injuries. EPA overstates its case in arguing that its decision not to regulate contributes so insignificantly to petitioners' injuries that it cannot be haled into federal court, and that there is no realistic possibility that the relief sought would mitigate global climate change and remedy petitioners' injuries, especially since predicted increases in emissions from China, India, and other developing nations will likely offset any marginal domestic decrease EPA regulation could bring about. Agencies, like legislatures, do not generally resolve massive problems in one fell swoop, see *Williamson* v. *Lee Optical of Okla., Inc.*, 348 U. S. 483, 489, but instead whittle away over time, refining their approach as circumstances change and they develop a more nuanced understanding of how best to proceed, cf. *SEC* v. *Chenery Corp.*, 332 U. S. 194, 202–203. That a first step might be tentative does not by itself negate federal-court jurisdiction. And reducing domestic automobile emissions is hardly tentative. Leaving aside the other greenhouse gases, the record indicates that the U. S. transportation sector emits an enormous quantity of carbon dioxide into the atmosphere. Pp. 523–525.

(d) While regulating motor-vehicle emissions may not by itself *reverse* global warming, it does not follow that the Court lacks jurisdiction to decide whether EPA has a duty to take steps to *slow* or *reduce* it.

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See *Larson* v. *Valente*, 456 U. S. 228, 243, n. 15. Because of the enormous potential consequences, the fact that a remedy's effectiveness might be delayed during the (relatively short) time it takes for a new motor-vehicle fleet to replace an older one is essentially irrelevant. Nor is it dispositive that developing countries are poised to substantially increase greenhouse gas emissions: A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere. The Court attaches considerable significance to EPA's espoused belief that global climate change must be addressed. Pp. 525–526.

2. The scope of the Court's review of the merits of the statutory issues is narrow. Although an agency's refusal to initiate enforcement proceedings is not ordinarily subject to judicial review, *Heckler* v. *Chaney*, 470 U. S. 821, there are key differences between nonenforcement and denials of rulemaking petitions that are, as in the present circumstances, expressly authorized. EPA concluded alternatively in its petition denial that it lacked authority under § 7521(a)(1) to regulate new vehicle emissions because carbon dioxide is not an "air pollutant" under § 7602, and that, even if it possessed authority, it would decline to exercise it because regulation would conflict with other administration priorities. Because the Act expressly permits review of such an action, § 7607(b)(1), this Court "may reverse [it if it finds it to be] arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," § 7607(d)(9). Pp. 527–528.

3. Because greenhouse gases fit well within the Act's capacious definition of "air pollutant," EPA has statutory authority to regulate emission of such gases from new motor vehicles. That definition—which includes "*any* air pollution agent . . . , including *any* physical, chemical, . . . substance . . . emitted into . . . the ambient air . . . ," § 7602(g) (emphasis added)—embraces all airborne compounds of whatever stripe. Moreover, carbon dioxide and other greenhouse gases are undoubtedly "physical [and] chemical . . . substance[s]." *Ibid.* EPA's reliance on postenactment congressional actions and deliberations it views as tantamount to a command to refrain from regulating greenhouse gas emissions is unavailing. Even if postenactment legislative history could shed light on the meaning of an otherwise-unambiguous statute, EPA identifies nothing suggesting that Congress meant to curtail EPA's power to treat greenhouse gases as air pollutants. The Court has no difficulty reconciling Congress' various efforts to promote interagency collaboration and research to better understand climate change with the Agency's pre-existing mandate to regulate "any air pollutant" that may endanger the public welfare. *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 133, distinguished. Also unper-

Syllabus

suasive is EPA's argument that its regulation of motor-vehicle carbon dioxide emissions would require it to tighten mileage standards, a job (according to EPA) that Congress has assigned to the Department of Transportation. The fact that DOT's mandate to promote energy efficiency by setting mileage standards may overlap with EPA's environmental responsibilities in no way licenses EPA to shirk its duty to protect the public "health" and "welfare," § 7521(a)(1). Pp. 528–532.

4. EPA's alternative basis for its decision—that even if it has statutory authority to regulate greenhouse gases, it would be unwise to do so at this time—rests on reasoning divorced from the statutory text. While the statute conditions EPA action on its formation of a "judgment," that judgment must relate to whether an air pollutant "cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare." § 7601(a)(1). Under the Act's clear terms, EPA can avoid promulgating regulations only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do. It has refused to do so, offering instead a laundry list of reasons not to regulate, including the existence of voluntary Executive Branch programs providing a response to global warming and impairment of the President's ability to negotiate with developing nations to reduce emissions. These policy judgments have nothing to do with whether greenhouse gas emissions contribute to climate change and do not amount to a reasoned justification for declining to form a scientific judgment. Nor can EPA avoid its statutory obligation by noting the uncertainty surrounding various features of climate change and concluding that it would therefore be better not to regulate at this time. If the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment, it must say so. The statutory question is whether sufficient information exists for it to make an endangerment finding. Instead, EPA rejected the rulemaking petition based on impermissible considerations. Its action was therefore "arbitrary, capricious, or otherwise not in accordance with law," § 7607(d)(9). On remand, EPA must ground its reasons for action or inaction in the statute. Pp. 532–535.

415 F. 3d 50, reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. ROBERTS, C. J., filed a dissenting opinion, in which SCALIA, THOMAS, and ALITO, JJ., joined, *post*, p. 535. SCALIA, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS and ALITO, JJ., joined, *post*, p. 549.

Counsel

James R. Milkey, Assistant Attorney General of Massachusetts, argued the cause for petitioners. With him on the briefs were *Thomas F. Reilly*, Attorney General, *Lisa Heinzerling*, Special Assistant Attorney General, and *William L. Pardee* and *Carol Iancu*, Assistant Attorneys General, *Zulima V. Farber*, Attorney General of New Jersey, *Michael Cardozo*, Corporation Counsel of the City of New York, and *Scott Pasternack*, Assistant Corporation Counsel, *Ralph S. Tyler*, City Solicitor of Baltimore, and *William Phelan, Jr.*, *Joseph Mendelson III*, *John M. Stanton*, *David Doniger*, *David Bookbinder*, and *Howard Fox*, and by the Attorneys General and other officials for their respective jurisdictions as follows: *Bill Lockyer*, Attorney General of California, *Marc N. Melnick* and *Nicholas Stern*, Deputy Attorneys General, *Richard Blumenthal*, Attorney General of Connecticut, *Kimberly Massicotte* and *Matthew Levin*, Assistant Attorneys General, *Robert J. Spagnoletti*, Attorney General of the District of Columbia, *Todd S. Kim*, Solicitor General, *Donna Murasky*, Senior Assistant Attorney General, *Lisa Madigan*, Attorney General of Illinois, *Matthew J. Dunn* and *Gerald T. Karr*, Assistant Attorneys General, *G. Steven Rowe*, Attorney General of Maine, *Gerald D. Reid*, Assistant Attorney General, *Stuart Rabner*, Attorney General of New Jersey, *Stefanie A. Brand*, *Kevin P. Auerbacher*, and *Lisa Morelli*, Deputy Attorneys General, *Patricia A. Madrid*, Attorney General of New Mexico, *Stuart M. Bluestone*, Deputy Attorney General, *Stephen R. Ferris* and *Judith Ann Moore*, Assistant Attorneys General, *Eliot Spitzer*, Attorney General of New York, *Caitlin J. Halligan*, Solicitor General, *Peter Lehner* and *J. Jared Snyder*, Assistant Attorneys General, *Hardy Myers*, Attorney General of Oregon, *Philip Schradle*, Special Counsel to the Attorney General, *Richard Whitman*, Assistant Attorney General, *Patrick C. Lynch*, Attorney General of Rhode Island, *Tricia K. Jedele*, Special Assistant Attorney General, *William H. Sorrell*, Attorney General of Vermont, *Kevin O. Leske*, As-

Counsel

sistant Attorney General, *Rob McKenna*, Attorney General of Washington, *Leslie R. Seffern*, Assistant Attorney General, *Jay D. Geck*, Deputy Solicitor General, and *Malaetasi M. Togafau*, Attorney General of American Samoa.

Deputy Solicitor General Garre argued the cause for respondents. With him on the brief for the federal respondent were *Solicitor General Clement*, *Assistant Attorney General Wooldridge*, *Deputy Solicitor General Hungar*, *Malcolm L. Stewart*, *Jon M. Lipshultz*, and *Carol S. Holmes*. *Michael A. Cox*, Attorney General of Michigan, filed a brief for respondent State of Michigan. With him on the brief were *Thomas L. Casey*, Solicitor General, *Alan F. Hoffman* and *Neil D. Gordon*, Assistant Attorneys General, and the Attorneys General and other officials for their respective States as follows: *David W. Márquez*, Attorney General of Alaska, *Phil Kline*, Attorney General of Kansas, *David W. Davies*, Deputy Attorney General, *Jon C. Bruning*, Attorney General of Nebraska, *David D. Cookson*, Special Counsel to the Attorney General, *Natalee J. Hart*, Assistant Attorney General, *Wayne Stenehjem*, Attorney General of North Dakota, *Lyle Witham*, Assistant Attorney General, *Jim Petro*, Attorney General of Ohio, *Dale T. Vitale*, Senior Deputy Attorney General, *Lawrence E. Long*, Attorney General of South Dakota, *Greg Abbott*, Attorney General of Texas, *Karen W. Kornell* and *Jane Atwood*, Assistant Attorneys General, and *Mark L. Shurtleff*, Attorney General of Utah, and *Fred G. Nelson*, Assistant Attorney General. *Theodore B. Olson*, *Miguel A. Estrada*, *David Debold*, *Matthew D. McGill*, *Kenneth W. Starr*, *Stuart A. C. Drake*, *Andrew B. Clubok*, and *Ashley C. Parrish* filed a brief for respondent Alliance of Automobile Manufacturers et al. *Russell S. Frye*, *Leslie A. Hulse*, *Richard Wasserstrom*, *Harry M. Ng*, *Ralph J. Colleli, Jr.*, *Nick Goldstein*, *Jan S. Amundson*, *Quentin Riegel*, *Robin S. Conrad*, and *John L. Wittenborn* filed a brief for respondent CO_2 Litigation Group. *Norman W.*

Fichthorn and *Allison D. Wood* filed a brief for respondent Utility Air Regulatory Group.*

JUSTICE STEVENS delivered the opinion of the Court.

A well-documented rise in global temperatures has coincided with a significant increase in the concentration of car-

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*Briefs of *amici curiae* urging reversal were filed for the State of Arizona et al. by *Terry Goddard*, Attorney General of Arizona, *Paula S. Bickett*, Chief Counsel, *Joseph P. Mikitish*, Assistant Attorney General, and *Amy J. Wildermuth*, and by *Thomas J. Miller*, Attorney General of Iowa, *J. Joseph Curran, Jr.*, Attorney General of Maryland, *Mike Hatch*, Attorney General of Minnesota, and *Peggy A. Lautenschlager*, Attorney General of Wisconsin, and *Thomas J. Dawson*, Assistant Attorney General; for the Alaska Inter-Tribal Council et al. by *Frances M. Raskin;* for Aspen Skiing Co. by *Edward T. Ramey* and *Blain D. Myhre;* for Calpine Corp. by *Richard E. Ayres;* for the National Council of the Churches of Christ in the U. S. A. et al. by *Fran M. Layton;* for Ocean and Coastal Conservation Interests by *Patrick A. Parenteau;* for the U. S. Conference of Mayors et al. by *Timothy J. Dowling;* for Wildlife Conservation Interests by *John F. Kostyack;* for Madeleine K. Albright by *Kathleen M. Sullivan;* for Climate Scientist David Battisti et al. by *Robert B. McKinstry, Jr.*, *Stephanie Tai*, and *John C. Dernbach;* and for Former EPA Administrator Carol M. Browner et al. by *Deborah A. Sivas*, *Michael C. Davis*, and *Barry S. Neuman*.

Briefs of *amici curiae* urging affirmance were filed for the Washington Legal Foundation by *Daniel J. Popeo*, *Paul D. Kamenar*, and *Peter S. Glaser;* for Climatologist and Scientist Sallie Baliunas et al. by *Sam Kazman*, *Hans Bader*, and *Christopher C. Horner;* for William J. Baumol et al. by *Timothy S. Bishop*, *Russell R. Eggert*, and *Erika Z. Jones;* for Ernest L. Daman et al. by *Martin S. Kaufman;* and for William H. Taft IV by *Arnold W. Reitze, Jr.*

Briefs of *amici curiae* were filed for the State of Delaware by *Carl C. Danberg*, Attorney General, *Lawrence Lewis*, State Solicitor, and *Kevin Maloney*, *Robert Phillips*, and *Valerie Csizmadia*, Deputy Attorneys General; for the Cato Institute et al. by *Timothy Lynch;* for Entergy Corp. by *Elise N. Zoli*, *U. Gwyn Williams*, *Kevin P. Martin*, and *Chuck D. Barlow;* for the North Coast Rivers Alliance et al. by *Stephan C. Volker;* for the Pacific Legal Foundation by *M. Reed Hopper;* for the Union for Jobs and the Environment by *Scott H. Segal*, *Jason B. Hutt*, and *Shelby J. Kelley;* for Robert H. Bork et al. by *David B. Rivkin, Jr.*, *Lee A. Casey*, and *Darin R. Bartram;* and for Jerome B. Carr by *Albert Auburn*.

bon dioxide in the atmosphere. Respected scientists believe the two trends are related. For when carbon dioxide is released into the atmosphere, it acts like the ceiling of a greenhouse, trapping solar energy and retarding the escape of reflected heat. It is therefore a species—the most important species—of a "greenhouse gas."

Calling global warming "the most pressing environmental challenge of our time,"[1] a group of States,[2] local governments,[3] and private organizations[4] alleged in a petition for certiorari that the Environmental Protection Agency (EPA) has abdicated its responsibility under the Clean Air Act to regulate the emissions of four greenhouse gases, including carbon dioxide. Specifically, petitioners asked us to answer two questions concerning the meaning of § 202(a)(1) of the Act: whether EPA has the statutory authority to regulate greenhouse gas emissions from new motor vehicles; and if so, whether its stated reasons for refusing to do so are consistent with the statute.

In response, EPA, supported by 10 intervening States[5] and six trade associations,[6] correctly argued that we may not address those two questions unless at least one petitioner has standing to invoke our jurisdiction under Article III of the Constitution. Notwithstanding the serious character of

[1] Pet. for Cert. 22.

[2] California, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington.

[3] District of Columbia, American Samoa, New York City, and Baltimore.

[4] Center for Biological Diversity, Center for Food Safety, Conservation Law Foundation, Environmental Advocates, Environmental Defense, Friends of the Earth, Greenpeace, International Center for Technology Assessment, National Environmental Trust, Natural Resources Defense Council, Sierra Club, Union of Concerned Scientists, and U. S. Public Interest Research Group.

[5] Alaska, Idaho, Kansas, Michigan, Nebraska, North Dakota, Ohio, South Dakota, Texas, and Utah.

[6] Alliance of Automobile Manufacturers, National Automobile Dealers Association, Engine Manufacturers Association, Truck Manufacturers Association, CO_2 Litigation Group, and Utility Air Regulatory Group.

that jurisdictional argument and the absence of any conflicting decisions construing §202(a)(1), the unusual importance of the underlying issue persuaded us to grant the writ. 548 U. S. 903 (2006).

I

Section 202(a)(1) of the Clean Air Act, as added by Pub. L. 89–272, §101(8), 79 Stat. 992, and as amended by, *inter alia*, 84 Stat. 1690 and 91 Stat. 791, 42 U. S. C. §7521(a)(1), provides:

> "The [EPA] Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare . . . ."[7]

The Act defines "air pollutant" to include "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." §7602(g). "Welfare" is also defined broadly: among other things, it includes "effects on . . . weather . . . and climate." §7602(h).

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[7] The 1970 version of §202(a)(1) used the phrase "which endangers the public health or welfare" rather than the more protective "which may reasonably be anticipated to endanger public health or welfare." See §6(a) of the Clean Air Amendments of 1970, 84 Stat. 1690. Congress amended §202(a)(1) in 1977 to give its approval to the decision in *Ethyl Corp.* v. *EPA*, 541 F. 2d 1, 25 (CADC 1976) (en banc), which held that the Clean Air Act "and common sense . . . demand regulatory action to prevent harm, even if the regulator is less than certain that harm is otherwise inevitable." See §401(d)(1) of the Clean Air Act Amendments of 1977, 91 Stat. 791; see also H. R. Rep. No. 95–294, p. 49 (1977).

When Congress enacted these provisions, the study of climate change was in its infancy.[8] In 1959, shortly after the U. S. Weather Bureau began monitoring atmospheric carbon dioxide levels, an observatory in Mauna Loa, Hawaii, recorded a mean level of 316 parts per million. This was well above the highest carbon dioxide concentration—no more than 300 parts per million—revealed in the 420,000-year-old ice-core record.[9] By the time Congress drafted §202(a)(1) in 1970, carbon dioxide levels had reached 325 parts per million.[10]

In the late 1970's, the Federal Government began devoting serious attention to the possibility that carbon dioxide emissions associated with human activity could provoke climate change. In 1978, Congress enacted the National Climate Program Act, 92 Stat. 601, which required the President to establish a program to "assist the Nation and the world to

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[8] The Council on Environmental Quality had issued a report in 1970 concluding that "[m]an may be changing his weather." Environmental Quality: The First Annual Report 93. Considerable uncertainty remained in those early years, and the issue went largely unmentioned in the congressional debate over the enactment of the Clean Air Act. But see 116 Cong. Rec. 32914 (1970) (statement of Sen. Boggs referring to Council's conclusion that "[a]ir pollution alters the climate and may produce global changes in temperature").

[9] See Intergovernmental Panel on Climate Change, Climate Change 2001: Synthesis Report, pp. 202–203 (2001). By drilling through thick Antarctic ice sheets and extracting "cores," scientists can examine ice from long ago and extract small samples of ancient air. That air can then be analyzed, yielding estimates of carbon dioxide levels. *Ibid.*

[10] A more dramatic rise was yet to come: In 2006, carbon dioxide levels reached 382 parts per million, see Dept. of Commerce, National Oceanic & Atmospheric Administration, Mauna Loa CO_2 Monthly Mean Data, http://www.esrl.noaa.gov/gmd/ccgg/trends/co2_mm_mlo.dat (all Internet materials as visited Mar. 29, 2007, and available in Clerk of Court's case file), a level thought to exceed the concentration of carbon dioxide in the atmosphere at any point over the past 20 million years. See Intergovernmental Panel on Climate Change, Technical Summary of Working Group I Report 39 (2001).

understand and respond to natural and man-induced climate processes and their implications," *id.*, § 3. President Carter, in turn, asked the National Research Council, the working arm of the National Academy of Sciences, to investigate the subject. The Council's response was unequivocal: "If carbon dioxide continues to increase, the study group finds no reason to doubt that climate changes will result and no reason to believe that these changes will be negligible. . . . A wait-and-see policy may mean waiting until it is too late."[11]

Congress next addressed the issue in 1987, when it enacted the Global Climate Protection Act, Title XI of Pub. L. 100–204, 101 Stat. 1407, note following 15 U. S. C. § 2901. Finding that "manmade pollution—the release of carbon dioxide, chlorofluorocarbons, methane, and other trace gases into the atmosphere—may be producing a long-term and substantial increase in the average temperature on Earth," § 1102(1), 101 Stat. 1408, Congress directed EPA to propose to Congress a "coordinated national policy on global climate change," § 1103(b), and ordered the Secretary of State to work "through the channels of multilateral diplomacy" and coordinate diplomatic efforts to combat global warming, § 1103(c). Congress emphasized that "ongoing pollution and deforestation may be contributing now to an irreversible process" and that "[n]ecessary actions must be identified and implemented in time to protect the climate." § 1102(4).

Meanwhile, the scientific understanding of climate change progressed. In 1990, the Intergovernmental Panel on Climate Change (IPCC), a multinational scientific body organized under the auspices of the United Nations, published its first comprehensive report on the topic. Drawing on expert opinions from across the globe, the IPCC concluded that "emissions resulting from human activities are substantially

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[11] Climate Research Board, Carbon Dioxide and Climate: A Scientific Assessment, p. viii (1979).

increasing the atmospheric concentrations of . . . greenhouse gases [which] will enhance the greenhouse effect, resulting on average in an additional warming of the Earth's surface."[12]

Responding to the IPCC report, the United Nations convened the "Earth Summit" in 1992 in Rio de Janeiro. The first President Bush attended and signed the United Nations Framework Convention on Climate Change (UNFCCC), a nonbinding agreement among 154 nations to reduce atmospheric concentrations of carbon dioxide and other greenhouse gases for the purpose of "prevent[ing] dangerous anthropogenic [*i. e.*, human-induced] interference with the [Earth's] climate system."[13] S. Treaty Doc. No. 102–38, Art. 2, p. 5, 1771 U. N. T. S. 107 (1992). The Senate unanimously ratified the treaty.

Some five years later—after the IPCC issued a second comprehensive report in 1995 concluding that "[t]he balance of evidence suggests there is a discernible human influence on global climate"[14]—the UNFCCC signatories met in Kyoto, Japan, and adopted a protocol that assigned mandatory targets for industrialized nations to reduce greenhouse gas emissions. Because those targets did not apply to developing and heavily polluting nations such as China and India, the Senate unanimously passed a resolution expressing its sense that the United States should not enter into the Kyoto Protocol. See S. Res. 98, 105th Cong., 1st Sess. (July 25, 1997) (as passed). President Clinton did not submit the protocol to the Senate for ratification.

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[12] IPCC, Climate Change: The IPCC Scientific Assessment, p. xi (J. Houghton, G. Jenkins, & J. Ephraums eds. 1991).

[13] The industrialized countries listed in Annex I to the UNFCCC undertook to reduce their emissions of greenhouse gases to 1990 levels by the year 2000. No immediate restrictions were imposed on developing countries, including China and India. They could choose to become Annex I countries when sufficiently developed.

[14] IPCC, Climate Change 1995, The Science of Climate Change, p. 4.

II

On October 20, 1999, a group of 19 private organizations[15] filed a rulemaking petition asking EPA to regulate "greenhouse gas emissions from new motor vehicles under § 202 of the Clean Air Act." App. 5. Petitioners maintained that 1998 was the "warmest year on record"; that carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are "heat trapping greenhouse gases"; that greenhouse gas emissions have significantly accelerated climate change; and that the IPCC's 1995 report warned that "carbon dioxide remains the most important contributor to [manmade] forcing of climate change." *Id.*, at 13 (internal quotation marks omitted). The petition further alleged that climate change will have serious adverse effects on human health and the environment. *Id.*, at 22–35. As to EPA's statutory authority, the petition observed that the Agency itself had already confirmed that it had the power to regulate carbon dioxide. See *id.*, at 18, n. 21. In 1998, Jonathan Z. Cannon, then EPA's general counsel, prepared a legal opinion concluding that "CO_2 emissions are within the scope of EPA's authority to regulate," even as he recognized that EPA had so far declined to exercise that authority. *Id.*, at 54 (memorandum to Carol M. Browner, Administrator (Apr. 10, 1998) (hereinafter Cannon memorandum)). Cannon's successor, Gary S. Guzy, reiterated that opinion before a congressional committee just

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[15] Alliance for Sustainable Communities; Applied Power Technologies, Inc.; Bio Fuels America; The California Solar Energy Industries Assn.; Clements Environmental Corp.; Environmental Advocates; Environmental and Energy Study Institute; Friends of the Earth; Full Circle Energy Project, Inc.; The Green Party of Rhode Island; Greenpeace USA; International Center for Technology Assessment; Network for Environmental and Economic Responsibility of the United Church of Christ; New Jersey Environmental Watch; New Mexico Solar Energy Assn.; Oregon Environmental Council; Public Citizen; Solar Energy Industries Assn.; The SUN DAY Campaign. See App. 7–11.

two weeks before the rulemaking petition was filed. See *id.*, at 61.

Fifteen months after the petition's submission, EPA requested public comment on "all the issues raised in [the] petition," adding a "particular" request for comments on "any scientific, technical, legal, economic or other aspect of these issues that may be relevant to EPA's consideration of this petition." 66 Fed. Reg. 7486, 7487 (2001). EPA received more than 50,000 comments over the next five months. See 68 Fed. Reg. 52924 (2003).

Before the close of the comment period, the White House sought "assistance in identifying the areas in the science of climate change where there are the greatest certainties and uncertainties" from the National Research Council, asking for a response "as soon as possible." App. 213. The result was a 2001 report titled Climate Change Science: An Analysis of Some Key Questions (NRC Report), which, drawing heavily on the 1995 IPCC report, concluded that "[g]reenhouse gases are accumulating in Earth's atmosphere as a result of human activities, causing surface air temperatures and subsurface ocean temperatures to rise. Temperatures are, in fact, rising." NRC Report 1.

On September 8, 2003, EPA entered an order denying the rulemaking petition. 68 Fed. Reg. 52922. The Agency gave two reasons for its decision: (1) that contrary to the opinions of its former general counsels, the Clean Air Act does not authorize EPA to issue mandatory regulations to address global climate change, see *id.*, at 52925–52929; and (2) that even if the Agency had the authority to set greenhouse gas emission standards, it would be unwise to do so at this time, *id.*, at 52929–52931.

In concluding that it lacked statutory authority over greenhouse gases, EPA observed that Congress "was well aware of the global climate change issue when it last comprehensively amended the [Clean Air Act] in 1990," yet it declined to adopt a proposed amendment establishing binding

emissions limitations. *Id.*, at 52926. Congress instead chose to authorize further investigation into climate change. *Ibid.* (citing §§ 103(g) and 602(e) of the Clean Air Act Amendments of 1990, 104 Stat. 2652, 2703, 42 U. S. C. §§ 7403(g)(1) and 7671a(e)). EPA further reasoned that Congress' "specially tailored solutions to global atmospheric issues," 68 Fed. Reg. 52926—in particular, its 1990 enactment of a comprehensive scheme to regulate pollutants that depleted the ozone layer, see Title VI, 104 Stat. 2649, 42 U. S. C. §§ 7671–7671q—counseled against reading the general authorization of § 202(a)(1) to confer regulatory authority over greenhouse gases.

EPA stated that it was "urged on in this view," 68 Fed. Reg. 52928, by this Court's decision in *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120 (2000). In that case, relying on "tobacco['s] unique political history," *id.*, at 159, we invalidated the Food and Drug Administration's reliance on its general authority to regulate drugs as a basis for asserting jurisdiction over an "industry constituting a significant portion of the American economy," *ibid.*

EPA reasoned that climate change had its own "political history": Congress designed the original Clean Air Act to address *local* air pollutants rather than a substance that "is fairly consistent in its concentration throughout the *world's* atmosphere," 68 Fed. Reg. 52927; declined in 1990 to enact proposed amendments to force EPA to set carbon dioxide emission standards for motor vehicles, *ibid.* (citing H. R. 5966, 101st Cong., 2d Sess. (1990)); and addressed global climate change in other legislation, 68 Fed. Reg. 52927. Because of this political history, and because imposing emission limitations on greenhouse gases would have even greater economic and political repercussions than regulating tobacco, EPA was persuaded that it lacked the power to do so. *Id.*, at 52928. In essence, EPA concluded that climate change was so important that unless Congress spoke with exacting specificity, it could not have meant the Agency to address it.

Having reached that conclusion, EPA believed it followed that greenhouse gases cannot be "air pollutants" within the meaning of the Act. See *ibid.* ("It follows from this conclusion, that [greenhouse gases], as such, are not air pollutants under the [Clean Air Act's] regulatory provisions . . . "). The Agency bolstered this conclusion by explaining that if carbon dioxide were an air pollutant, the only feasible method of reducing tailpipe emissions would be to improve fuel economy. But because Congress has already created detailed mandatory fuel economy standards subject to Department of Transportation (DOT) administration, the Agency concluded that EPA regulation would either conflict with those standards or be superfluous. *Id.*, at 52929.

Even assuming that it had authority over greenhouse gases, EPA explained in detail why it would refuse to exercise that authority. The Agency began by recognizing that the concentration of greenhouse gases has dramatically increased as a result of human activities, and acknowledged the attendant increase in global surface air temperatures. *Id.*, at 52930. EPA nevertheless gave controlling importance to the NRC Report's statement that a causal link between the two "'cannot be unequivocally established.'" *Ibid.* (quoting NRC Report 17). Given that residual uncertainty, EPA concluded that regulating greenhouse gas emissions would be unwise. 68 Fed. Reg. 52930.

The Agency furthermore characterized any EPA regulation of motor-vehicle emissions as a "piecemeal approach" to climate change, *id.*, at 52931, and stated that such regulation would conflict with the President's "comprehensive approach" to the problem, *ibid.* That approach involves additional support for technological innovation, the creation of nonregulatory programs to encourage voluntary private-sector reductions in greenhouse gas emissions, and further research on climate change—not actual regulation. *Id.*, at 52932–52933. According to EPA, unilateral EPA regulation of motor-vehicle greenhouse gas emissions might also

hamper the President's ability to persuade key developing countries to reduce greenhouse gas emissions. *Id.*, at 52931.

III

Petitioners, now joined by intervenor States and local governments, sought review of EPA's order in the United States Court of Appeals for the District of Columbia Circuit.[16] Although each of the three judges on the panel wrote a separate opinion, two judges agreed "that the EPA Administrator properly exercised his discretion under §202(a)(1) in denying the petition for rule making." 415 F. 3d 50, 58 (2005). The court therefore denied the petition for review.

In his opinion announcing the court's judgment, Judge Randolph avoided a definitive ruling as to petitioners' standing, *id.*, at 56, reasoning that it was permissible to proceed to the merits because the standing and the merits inquiries "overlap[ped]," *ibid.* Assuming without deciding that the statute authorized the EPA Administrator to regulate greenhouse gas emissions that "in his judgment" may "reasonably be anticipated to endanger public health or welfare," 42 U. S. C. § 7521(a)(1), Judge Randolph concluded that the exercise of that judgment need not be based solely on scientific evidence, but may also be informed by the sort of policy judgments that motivate congressional action. 415 F. 3d, at 58. Given that framework, it was reasonable for EPA to base its decision on scientific uncertainty as well as on other factors, including the concern that unilateral regulation of U. S. motor-vehicle emissions could weaken efforts to reduce greenhouse gas emissions from other countries. *Ibid.*

Judge Sentelle wrote separately because he believed petitioners failed to "demonstrat[e] the element of injury neces-

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[16] See 42 U. S. C. § 7607(b)(1) ("A petition for review of action of the Administrator in promulgating any . . . standard under section 7521 of this title . . . or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia").

sary to establish standing under Article III." *Id.*, at 59 (opinion dissenting in part and concurring in judgment). In his view, they had alleged that global warming is "harmful to humanity at large," but could not allege "particularized injuries" to themselves. *Id.*, at 60 (citing *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 562 (1992)). While he dissented on standing, however, he accepted the contrary view as the law of the case and joined Judge Randolph's judgment on the merits as the closest to that which he preferred. 415 F. 3d, at 60–61.

Judge Tatel dissented. Emphasizing that EPA nowhere challenged the factual basis of petitioners' affidavits, *id.*, at 66, he concluded that at least Massachusetts had "satisfied each element of Article III standing—injury, causation, and redressability," *id.*, at 64. In Judge Tatel's view, the "'substantial probability,'" *id.*, at 66, that projected rises in sea level would lead to serious loss of coastal property was a "far cry" from the kind of generalized harm insufficient to ground Article III jurisdiction. *Id.*, at 65. He found that petitioners' affidavits more than adequately supported the conclusion that EPA's failure to curb greenhouse gas emissions contributed to the sea level changes that threatened Massachusetts' coastal property. *Ibid.* As to redressability, he observed that one of petitioners' experts, a former EPA climatologist, stated that "'[a]chievable reductions in emissions of CO_2 and other [greenhouse gases] from U. S. motor vehicles would . . . delay and moderate many of the adverse impacts of global warming.'" *Ibid.* (quoting declaration of Michael MacCracken, former Executive Director, U. S. Global Change Research Program ¶ 5(e) (hereinafter MacCracken Decl.), available in 2 Petitioners' Standing Appendix in No. 03–1361 etc. (CADC), p. 209 (Stdg. App.)). He further noted that the one-time director of EPA's motor-vehicle pollution control efforts stated in an affidavit that enforceable emission standards would lead to the development of new technologies that "'would gradually be mandated by other countries around

the world.'" 415 F. 3d, at 66 (quoting declaration of Michael Walsh ¶¶ 7–8, 10, Stdg. App. 309–310, 311). On the merits, Judge Tatel explained at length why he believed the text of the statute provided EPA with authority to regulate greenhouse gas emissions, and why its policy concerns did not justify its refusal to exercise that authority. 415 F. 3d, at 67–82.

IV

Article III of the Constitution limits federal-court jurisdiction to "Cases" and "Controversies." Those two words confine "the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process." *Flast* v. *Cohen*, 392 U. S. 83, 95 (1968). It is therefore familiar learning that no justiciable "controversy" exists when parties seek adjudication of a political question, *Luther* v. *Borden*, 7 How. 1 (1849), when they ask for an advisory opinion, *Hayburn's Case*, 2 Dall. 409 (1792), see also *Clinton* v. *Jones*, 520 U. S. 681, 700, n. 33 (1997), or when the question sought to be adjudicated has been mooted by subsequent developments, *California* v. *San Pablo & Tulare R. Co.*, 149 U. S. 308 (1893). This case suffers from none of these defects.

The parties' dispute turns on the proper construction of a congressional statute, a question eminently suitable to resolution in federal court. Congress has moreover authorized this type of challenge to EPA action. See 42 U. S. C. § 7607(b)(1). That authorization is of critical importance to the standing inquiry: "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before." *Lujan*, 504 U. S., at 580 (KENNEDY, J., concurring in part and concurring in judgment). "In exercising this power, however, Congress must at the very least identify the injury it seeks to vindicate and relate the injury to the class of persons entitled to bring suit." *Ibid.* We will not, therefore, "entertain citi-

zen suits to vindicate the public's nonconcrete interest in the proper administration of the laws." *Id.*, at 581.

EPA maintains that because greenhouse gas emissions inflict widespread harm, the doctrine of standing presents an insuperable jurisdictional obstacle. We do not agree. At bottom, "the gist of the question of standing" is whether petitioners have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination." *Baker* v. *Carr*, 369 U. S. 186, 204 (1962). As JUSTICE KENNEDY explained in his *Lujan* concurrence:

> "While it does not matter how many persons have been injured by the challenged action, the party bringing suit must show that the action injures him in a concrete and personal way. This requirement is not just an empty formality. It preserves the vitality of the adversarial process by assuring both that the parties before the court have an actual, as opposed to professed, stake in the outcome, and that the legal questions presented . . . will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." 504 U. S., at 581 (internal quotation marks omitted).

To ensure the proper adversarial presentation, *Lujan* holds that a litigant must demonstrate that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that it is likely that a favorable decision will redress that injury. See *id.*, at 560–561. However, a litigant to whom Congress has "accorded a procedural right to protect his concrete interests," *id.*, at 572, n. 7—here, the right to challenge agency action unlawfully withheld, § 7607(b)(1)—"can assert that right without meeting all the normal standards for re-

dressability and immediacy," *ibid.* When a litigant is vested with a procedural right, that litigant has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant. *Ibid.*; see also *Sugar Cane Growers Cooperative of Fla.* v. *Veneman*, 289 F. 3d 89, 94–95 (CADC 2002) ("A [litigant] who alleges a deprivation of a procedural protection to which he is entitled never has to prove that if he had received the procedure the substantive result would have been altered. All that is necessary is to show that the procedural step was connected to the substantive result").

Only one of the petitioners needs to have standing to permit us to consider the petition for review. See *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 52, n. 2 (2006). We stress here, as did Judge Tatel below, the special position and interest of Massachusetts. It is of considerable relevance that the party seeking review here is a sovereign State and not, as it was in *Lujan*, a private individual.

Well before the creation of the modern administrative state, we recognized that States are not normal litigants for the purposes of invoking federal jurisdiction. As Justice Holmes explained in *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230, 237 (1907), a case in which Georgia sought to protect its citizens from air pollution originating outside its borders:

> "The case has been argued largely as if it were one between two private parties; but it is not. The very elements that would be relied upon in a suit between fellow-citizens as a ground for equitable relief are wanting here. The State owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This is a suit by a State for an injury to it in its capacity of *quasi*-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens,

> in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air."

Just as Georgia's independent interest "in all the earth and air within its domain" supported federal jurisdiction a century ago, so too does Massachusetts' well-founded desire to preserve its sovereign territory today. Cf. *Alden* v. *Maine*, 527 U. S. 706, 715 (1999) (observing that in the federal system, the States "are not relegated to the role of mere provinces or political corporations, but retain the dignity, though not the full authority, of sovereignty"). That Massachusetts does in fact own a great deal of the "territory alleged to be affected" only reinforces the conclusion that its stake in the outcome of this case is sufficiently concrete to warrant the exercise of federal judicial power.

When a State enters the Union, it surrenders certain sovereign prerogatives. Massachusetts cannot invade Rhode Island to force reductions in greenhouse gas emissions, it cannot negotiate an emissions treaty with China or India, and in some circumstances the exercise of its police powers to reduce in-state motor-vehicle emissions might well be pre-empted. See *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico ex rel. Barez*, 458 U. S. 592, 607 (1982) ("One helpful indication in determining whether an alleged injury to the health and welfare of its citizens suffices to give the State standing to sue *parens patriae* is whether the injury is one that the State, if it could, would likely attempt to address through its sovereign lawmaking powers").

These sovereign prerogatives are now lodged in the Federal Government, and Congress has ordered EPA to protect Massachusetts (among others) by prescribing standards applicable to the "emission of any air pollutant from any class or classes of new motor vehicle engines, which in [the Administrator's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public

health or welfare." 42 U. S. C. § 7521(a)(1). Congress has moreover recognized a concomitant procedural right to challenge the rejection of its rulemaking petition as arbitrary and capricious. § 7607(b)(1). Given that procedural right and Massachusetts' stake in protecting its quasi-sovereign interests, the Commonwealth is entitled to special solicitude in our standing analysis.[17]

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[17] THE CHIEF JUSTICE accuses the Court of misreading *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230 (1907), see *post*, at 537–538 (dissenting opinion), and "devis[ing] a new doctrine of state standing," *post*, at 548. But no less an authority than Hart & Wechsler's The Federal Courts and the Federal System understands *Tennessee Copper* as a standing decision. R. Fallon, D. Meltzer, & D. Shapiro, Hart & Wechsler's The Federal Courts and the Federal System 290 (5th ed. 2003). Indeed, it devotes an entire section to chronicling the long development of cases permitting States "to litigate as *parens patriae* to protect quasi-sovereign interests—*i. e.*, public or governmental interests that concern the state as a whole." *Id.*, at 289; see, *e. g.*, *Missouri* v. *Illinois*, 180 U. S. 208, 240–241 (1901) (finding federal jurisdiction appropriate not only "in cases involving boundaries and jurisdiction over lands and their inhabitants, and in cases directly affecting the property rights and interests of a State," but also when the "substantial impairment of the health and prosperity of the towns and cities of the state" are at stake).

Drawing on *Massachusetts* v. *Mellon*, 262 U. S. 447 (1923), and *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico ex rel. Barez*, 458 U. S. 592 (1982) (citing *Missouri* v. *Illinois*, 180 U. S. 208 (1901)), THE CHIEF JUSTICE claims that we "overloo[k] the fact that our cases cast significant doubt on a State's standing to assert a quasi-sovereign interest . . . against the Federal Government." *Post*, at 539. Not so. *Mellon* itself disavowed any such broad reading when it noted that the Court had been "called upon to adjudicate, not rights of person or property, not rights of dominion over physical domain, [and] *not quasi-sovereign rights actually invaded or threatened.*" 262 U. S., at 484–485 (emphasis added). In any event, we held in *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439, 447 (1945), that there is a critical difference between allowing a State "to protect her citizens from the operation of federal statutes" (which is what *Mellon* prohibits) and allowing a State to assert its rights under federal law (which it has standing to do). Massachusetts does not here dispute that the Clean Air Act *applies* to its citizens; it rather seeks to assert its rights under the Act. See also *Nebraska* v. *Wyoming*, 515 U. S. 1, 20 (1995) (holding that Wyoming had standing to bring a cross-claim against the United States to vindicate its "'*quasi-sovereign*' interests which are 'independent

With that in mind, it is clear that petitioners' submissions as they pertain to Massachusetts have satisfied the most demanding standards of the adversarial process. EPA's steadfast refusal to regulate greenhouse gas emissions presents a risk of harm to Massachusetts that is both "actual" and "imminent." *Lujan*, 504 U. S., at 560 (internal quotation marks omitted). There is, moreover, a "substantial likelihood that the judicial relief requested" will prompt EPA to take steps to reduce that risk. *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U. S. 59, 79 (1978).

The Injury

The harms associated with climate change are serious and well recognized. Indeed, the NRC Report itself—which EPA regards as an "objective and independent assessment of the relevant science," 68 Fed. Reg. 52930—identifies a number of environmental changes that have already inflicted significant harms, including "the global retreat of mountain glaciers, reduction in snow-cover extent, the earlier spring melting of ice on rivers and lakes, [and] the accelerated rate of rise of sea levels during the 20th century relative to the past few thousand years . . . ." NRC Report 16.

Petitioners allege that this only hints at the environmental damage yet to come. According to the climate scientist Michael MacCracken, "qualified scientific experts involved in climate change research" have reached a "strong consensus" that global warming threatens (among other things) a precipitate rise in sea levels by the end of the century, MacCracken Decl. ¶ 5, Stdg. App. 207, "severe and irreversible changes to natural ecosystems," *id.*, ¶ 5(d), at 209, a "significant reduction in water storage in winter snowpack in mountainous regions with direct and important economic consequences," *ibid.*, and an increase in the spread of disease, *id.*, ¶ 28, at 218–219. He also observes that rising ocean temper-

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of and behind the titles of its citizens, in all the earth and air within its domain' " (quoting *Tennessee Copper*, 206 U. S., at 237)).

atures may contribute to the ferocity of hurricanes. *Id.*, ¶¶ 23–25, at 216–217.[18]

That these climate-change risks are "widely shared" does not minimize Massachusetts' interest in the outcome of this litigation. See *Federal Election Comm'n* v. *Akins*, 524 U. S. 11, 24 (1998) ("[W]here a harm is concrete, though widely shared, the Court has found 'injury in fact' "). According to petitioners' unchallenged affidavits, global sea levels rose somewhere between 10 and 20 centimeters over the 20th century as a result of global warming. MacCracken Decl. ¶ 5(c), Stdg. App. 208. These rising seas have already begun to swallow Massachusetts' coastal land. *Id.*, at 196 (declaration of Paul H. Kirshen ¶ 5), 216 (MacCracken Decl. ¶ 23). Because the Commonwealth "owns a substantial portion of the state's coastal property," *id.*, at 171 (declaration of Karst R. Hoogeboom ¶ 4),[19] it has alleged a particularized injury in its capacity as a landowner. The severity of that injury will

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[18] In this regard, MacCracken's 2004 affidavit—drafted more than a year in advance of Hurricane Katrina—was eerily prescient. Immediately after discussing the "particular concern" that climate change might cause an "increase in the wind speed and peak rate of precipitation of major tropical cyclones (i. e., hurricanes and typhoons)," MacCracken noted that "[s]oil compaction, sea level rise and recurrent storms are destroying approximately 20–30 square miles of Louisiana wetlands each year. These wetlands serve as a 'shock absorber' for storm surges that could inundate New Orleans, significantly enhancing the risk to a major urban population." ¶¶ 24–25, Stdg. App. 217.

[19] "For example, the [Massachusetts Department of Conservation and Recreation] owns, operates and maintains approximately 53 coastal state parks, beaches, reservations, and wildlife sanctuaries. [It] also owns, operates and maintains sporting and recreational facilities in coastal areas, including numerous pools, skating rinks, playgrounds, playing fields, former coastal fortifications, public stages, museums, bike trails, tennis courts, boathouses and boat ramps and landings. Associated with these coastal properties and facilities is a significant amount of infrastructure, which the Commonwealth also owns, operates and maintains, including roads, parkways, stormwater pump stations, pier[s], sea wal[l] revetments and dams." Hoogeboom Decl. ¶ 4, at 171.

only increase over the course of the next century: If sea levels continue to rise as predicted, one Massachusetts official believes that a significant fraction of coastal property will be "either permanently lost through inundation or temporarily lost through periodic storm surge and flooding events." *Id.*, ¶ 6, at 172.[20] Remediation costs alone, petitioners allege, could run well into the hundreds of millions of dollars. *Id.*, ¶ 7, at 172; see also Kirshen Decl. ¶ 12, at 198.[21]

Causation

EPA does not dispute the existence of a causal connection between manmade greenhouse gas emissions and global warming. At a minimum, therefore, EPA's refusal to regulate such emissions "contributes" to Massachusetts' injuries.

EPA nevertheless maintains that its decision not to regulate greenhouse gas emissions from new motor vehicles contributes so insignificantly to petitioners' injuries that the Agency cannot be haled into federal court to answer for them. For the same reason, EPA does not believe that any realistic possibility exists that the relief petitioners seek would mitigate global climate change and remedy their injuries. That is especially so because predicted increases in greenhouse

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[20] See also *id.*, at 179 (declaration of Christian Jacqz) (discussing possible loss of roughly 14 acres of land per miles of coastline by 2100); Kirshen Decl. ¶ 10, at 198 (alleging that "[w]hen such a rise in sea level occurs, a 10-year flood will have the magnitude of the present 100-year flood and a 100-year flood will have the magnitude of the present 500-year flood").

[21] In dissent, THE CHIEF JUSTICE dismisses petitioners' submissions as "conclusory," presumably because they do not quantify Massachusetts' land loss with the exactitude he would prefer. *Post*, at 542. He therefore asserts that the Commonwealth's injury is "conjectur[al]." See *ibid.* Yet the likelihood that Massachusetts' coastline will recede has nothing to do with whether petitioners have determined the precise metes and bounds of their soon-to-be-flooded land. Petitioners maintain that the seas are rising and will continue to rise, and have alleged that such a rise will lead to the loss of Massachusetts' sovereign territory. No one, save perhaps the dissenters, disputes those allegations. Our cases require nothing more.

gas emissions from developing nations, particularly China and India, are likely to offset any marginal domestic decrease.

But EPA overstates its case. Its argument rests on the erroneous assumption that a small incremental step, because it is incremental, can never be attacked in a federal judicial forum. Yet accepting that premise would doom most challenges to regulatory action. Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop. See *Williamson* v. *Lee Optical of Okla., Inc.*, 348 U. S. 483, 489 (1955) ("[A] reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind"). They instead whittle away at them over time, refining their preferred approach as circumstances change and as they develop a more nuanced understanding of how best to proceed. Cf. *SEC* v. *Chenery Corp.*, 332 U. S. 194, 202 (1947) ("Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations"). That a first step might be tentative does not by itself support the notion that federal courts lack jurisdiction to determine whether that step conforms to law.

And reducing domestic automobile emissions is hardly a tentative step. Even leaving aside the other greenhouse gases, the United States transportation sector emits an enormous quantity of carbon dioxide into the atmosphere—according to the MacCracken affidavit, more than 1.7 billion metric tons in 1999 alone. ¶30, Stdg. App. 219. That accounts for more than 6% of worldwide carbon dioxide emissions. *Id.*, at 232 (Oppenheimer Decl. ¶3); see also MacCracken Decl. ¶31, at 220. To put this in perspective: Considering just emissions from the transportation sector, which represent less than one-third of this country's total carbon dioxide emissions, the United States would still rank as the third-largest emitter of carbon dioxide in the world,

outpaced only by the European Union and China.[22] Judged by any standard, U. S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and hence, according to petitioners, to global warming.

The Remedy

While it may be true that regulating motor-vehicle emissions will not by itself *reverse* global warming, it by no means follows that we lack jurisdiction to decide whether EPA has a duty to take steps to *slow* or *reduce* it. See also *Larson* v. *Valente*, 456 U. S. 228, 244, n. 15 (1982) ("[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his *every* injury"). Because of the enormity of the potential consequences associated with manmade climate change, the fact that the effectiveness of a remedy might be delayed during the (relatively short) time it takes for a new motor-vehicle fleet to replace an older one is essentially irrelevant.[23] Nor is it dispositive that developing countries such as China and India are poised to increase greenhouse gas emissions

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[22] See UNFCCC, National Greenhouse Gas Inventory Data for the Period 1990–2004 and Status of Reporting 14 (2006) (reflecting emissions from Annex I countries); UNFCCC, Sixth Compilation and Synthesis of Initial National Communications from Parties not Included in Annex I to the Convention 7–8 (2005) (reflecting emissions from non-Annex I countries); see also Dept. of Energy, Energy Information Admin., International Energy Annual 2004, H.1co2 World Carbon Dioxide Emissions from the Consumption and Flaring of Fossil Fuels, 1980–2004 (Table), http://www.eia.doe.gov/pub/international/iealf/tableh1co2.xls.

[23] See also *Mountain States Legal Foundation* v. *Glickman*, 92 F. 3d 1228, 1234 (CADC 1996) ("The more drastic the injury that government action makes more likely, the lesser the increment in probability to establish standing"); *Village of Elk Grove Village* v. *Evans*, 997 F. 2d 328, 329 (CA7 1993) ("[E]ven a small probability of injury is sufficient to create a case or controversy—to take a suit out of the category of the hypothetical—provided of course that the relief sought would, if granted, reduce the probability").

substantially over the next century: A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere.

We moreover attach considerable significance to EPA's "agree[ment] with the President that 'we must address the issue of global climate change,'" 68 Fed. Reg. 52929 (quoting remarks announcing Clear Skies and Global Climate Initiatives, 2002 Public Papers of George W. Bush, Vol. 1, Feb. 14, p. 227 (2004)), and to EPA's ardent support for various voluntary emission-reduction programs, 68 Fed. Reg. 52932. As Judge Tatel observed in dissent below, "EPA would presumably not bother with such efforts if it thought emissions reductions would have no discernable impact on future global warming." 415 F. 3d, at 66.

In sum—at least according to petitioners' uncontested affidavits—the rise in sea levels associated with global warming has already harmed and will continue to harm Massachusetts. The risk of catastrophic harm, though remote, is nevertheless real. That risk would be reduced to some extent if petitioners received the relief they seek. We therefore hold that petitioners have standing to challenge EPA's denial of their rulemaking petition.[24]

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[24] In his dissent, THE CHIEF JUSTICE expresses disagreement with the Court's holding in *United States* v. *Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U. S. 669, 687–688 (1973). He does not, however, disavow this portion of Justice Stewart's opinion for the Court:

"Unlike the specific and geographically limited federal action of which the petitioner complained in *Sierra Club* [v. *Morton*, 405 U. S. 727 (1972)], the challenged agency action in this case is applicable to substantially all of the Nation's railroads, and thus allegedly has an adverse environmental impact on all the natural resources of the country. Rather than a limited group of persons who used a picturesque valley in California, all persons who utilize the scenic resources of the country, and indeed all who breathe its air, could claim harm similar to that alleged by the environmental groups here. But we have already made it clear that standing is not to be denied simply because many people suffer the same injury. Indeed some of the cases on which we relied in *Sierra Club* demonstrated the patent fact that persons across the Nation could be adversely affected by

V

The scope of our review of the merits of the statutory issues is narrow. As we have repeated time and again, an agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–845 (1984). That discretion is at its height when the agency decides not to bring an enforcement action. Therefore, in *Heckler* v. *Chaney*, 470 U. S. 821 (1985), we held that an agency's refusal to initiate enforcement proceedings is not ordinarily subject to judicial review. Some debate remains, however, as to the rigor with which we review an agency's denial of a petition for rulemaking.

There are key differences between a denial of a petition for rulemaking and an agency's decision not to initiate an enforcement action. See *American Horse Protection Assn., Inc.* v. *Lyng*, 812 F. 2d 1, 3–4 (CADC 1987). In contrast to nonenforcement decisions, agency refusals to initiate rulemaking "are less frequent, more apt to involve legal as opposed to factual analysis, and subject to special formalities, including a public explanation." *Id.*, at 4; see also 5 U. S. C. § 555(e). They moreover arise out of denials of petitions for rulemaking which (at least in the circumstances here) the affected party had an undoubted procedural right to file in the first instance. Refusals to promulgate rules are thus susceptible to judicial review, though such review is "ex-

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major governmental actions. *To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody.* We cannot accept that conclusion." *Ibid.* (citations omitted and emphasis added).

It is moreover quite wrong to analogize the legal claim advanced by Massachusetts and the other public and private entities who challenge EPA's parsimonious construction of the Clean Air Act to a mere "lawyer's game." See *post*, at 548.

tremely limited" and "highly deferential." *National Customs Brokers & Forwarders Assn. of America, Inc.* v. *United States*, 883 F. 2d 93, 96 (CADC 1989).

EPA concluded in its denial of the petition for rulemaking that it lacked authority under 42 U. S. C. § 7521(a)(1) to regulate new vehicle emissions because carbon dioxide is not an "air pollutant" as that term is defined in § 7602. In the alternative, it concluded that even if it possessed authority, it would decline to do so because regulation would conflict with other administration priorities. As discussed earlier, the Clean Air Act expressly permits review of such an action. § 7607(b)(1). We therefore "may reverse any such action found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." § 7607(d)(9).

VI

On the merits, the first question is whether § 202(a)(1) of the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from new motor vehicles in the event that it forms a "judgment" that such emissions contribute to climate change. We have little trouble concluding that it does. In relevant part, § 202(a)(1) provides that EPA "shall by regulation prescribe . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [the Administrator's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U. S. C. § 7521(a)(1). Because EPA believes that Congress did not intend it to regulate substances that contribute to climate change, the agency maintains that carbon dioxide is not an "air pollutant" within the meaning of the provision.

The statutory text forecloses EPA's reading. The Clean Air Act's sweeping definition of "air pollutant" includes "*any* air pollution agent or combination of such agents, including *any* physical, chemical . . . substance or matter which is emit-

ted into or otherwise enters the ambient air . . . ." § 7602(g) (emphasis added). On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word "any."[25] Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt "physical [and] chemical . . . substance[s] which [are] emitted into . . . the ambient air." The statute is unambiguous.[26]

Rather than relying on statutory text, EPA invokes post-enactment congressional actions and deliberations it views as tantamount to a congressional command to refrain from regulating greenhouse gas emissions. Even if such post-enactment legislative history could shed light on the meaning of an otherwise-unambiguous statute, EPA never identifies any action remotely suggesting that Congress meant to curtail its power to treat greenhouse gases as air pollutants. That subsequent Congresses have eschewed enacting bind-

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[25] See *Department of Housing and Urban Development* v. *Rucker*, 535 U. S. 125, 131 (2002) (observing that "'any' . . . has an expansive meaning, that is, one or some indiscriminately of whatever kind" (some internal quotation marks omitted)).

[26] In dissent, JUSTICE SCALIA maintains that because greenhouse gases permeate the world's atmosphere rather than a limited area near the earth's surface, EPA's exclusion of greenhouse gases from the category of air pollution "agent[s]" is entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). See *post*, at 558–560. EPA's distinction, however, finds no support in the text of the statute, which uses the phrase "the ambient air" without distinguishing between atmospheric layers. Moreover, it is a plainly unreasonable reading of a sweeping statutory provision designed to capture "*any* physical, chemical . . . substance or matter which is emitted into or otherwise enters the ambient air." 42 U. S. C. § 7602(g). JUSTICE SCALIA does not (and cannot) explain why Congress would define "air pollutant" so carefully and so broadly, yet confer on EPA the authority to narrow that definition whenever expedient by asserting that a particular substance is not an "agent." At any rate, no party to this dispute contests that greenhouse gases both "ente[r] the ambient air" and tend to warm the atmosphere. They are therefore unquestionably "agent[s]" of air pollution.

ing emissions limitations to combat global warming tells us nothing about what Congress meant when it amended § 202(a)(1) in 1970 and 1977.[27] And unlike EPA, we have no difficulty reconciling Congress' various efforts to promote interagency collaboration and research to better understand climate change[28] with the Agency's pre-existing mandate to regulate "any air pollutant" that may endanger the public welfare. See 42 U. S. C. § 7601(a)(1). Collaboration and research do not conflict with any thoughtful regulatory effort; they complement it.[29]

EPA's reliance on *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, is similarly misplaced. In holding that tobacco products are not "drugs" or "devices" subject to Food and Drug Administration (FDA) regulation pursuant to the Food, Drug and Cosmetic Act (FDCA), see 529 U. S., at 133, we

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[27] See *United States* v. *Price*, 361 U. S. 304, 313 (1960) (holding that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one"); see also *Cobell* v. *Norton*, 428 F. 3d 1070, 1075 (CADC 2005) ("[P]ost-enactment legislative history is not only oxymoronic but inherently entitled to little weight").

[28] See, *e. g.*, National Climate Program Act, § 5, 92 Stat. 601, 15 U. S. C. § 2901 *et seq.* (calling for the establishment of a National Climate Program and for additional climate-change research); Global Climate Protection Act of 1987, § 1103, 101 Stat. 1408–1409, note following 15 U. S. C. § 2901 (directing EPA and the Secretary of State to "jointly" develop a "coordinated national policy on global climate change" and report to Congress); Global Change Research Act of 1990, Tit. I, 104 Stat. 3097, 15 U. S. C. §§ 2921–2938 (establishing for the "development and coordination of a comprehensive and integrated United States research program" to aid in "understand[ing] . . . human-induced and natural processes of climate change"); Global Climate Change Prevention Act of 1990, 104 Stat. 4058, 7 U. S. C. § 6701 *et seq.* (directing the Dept. of Agriculture to study the effects of climate change on forestry and agriculture); Energy Policy Act of 1992, §§ 1601–1609, 106 Stat. 2999, 42 U. S. C. §§ 13381–13388 (requiring the Secretary of Energy to report on information pertaining to climate change).

[29] We are moreover puzzled by EPA's roundabout argument that because later Congresses chose to address stratospheric ozone pollution in a specific legislative provision, it somehow follows that greenhouse gases cannot be air pollutants within the meaning of the Clean Air Act.

found critical at least two considerations that have no counterpart in this case.

First, we thought it unlikely that Congress meant to ban tobacco products, which the FDCA would have required had such products been classified as "drugs" or "devices." *Id.*, at 135–137. Here, in contrast, EPA jurisdiction would lead to no such extreme measures. EPA would only *regulate* emissions, and even then, it would have to delay any action "to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance," § 7521(a)(2). However much a ban on tobacco products clashed with the "common sense" intuition that Congress never meant to remove those products from circulation, *Brown & Williamson*, 529 U. S., at 133, there is nothing counterintuitive to the notion that EPA can curtail the emission of substances that are putting the global climate out of kilter.

Second, in *Brown & Williamson* we pointed to an unbroken series of congressional enactments that made sense only if adopted "against the backdrop of the FDA's consistent and repeated statements that it lacked authority under the FDCA to regulate tobacco." *Id.*, at 144. We can point to no such enactments here: EPA has not identified any congressional action that conflicts in any way with the regulation of greenhouse gases from new motor vehicles. Even if it had, Congress could not have acted against a regulatory "backdrop" of disclaimers of regulatory authority. Prior to the order that provoked this litigation, EPA had never disavowed the authority to regulate greenhouse gases, and in 1998 it in fact affirmed that it *had* such authority. See App. 54 (Cannon memorandum). There is no reason, much less a compelling reason, to accept EPA's invitation to read ambiguity into a clear statute.

EPA finally argues that it cannot regulate carbon dioxide emissions from motor vehicles because doing so would require it to tighten mileage standards, a job (according to

EPA) that Congress has assigned to DOT. See 68 Fed. Reg. 52929. But that DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities. EPA has been charged with protecting the public's "health" and "welfare," 42 U. S. C. §7521(a)(1), a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. See Energy Policy and Conservation Act, §2(5), 89 Stat. 874, 42 U. S. C. §6201(5). The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.

While the Congresses that drafted §202(a)(1) might not have appreciated the possibility that burning fossil fuels could lead to global warming, they did understand that without regulatory flexibility, changing circumstances and scientific developments would soon render the Clean Air Act obsolete. The broad language of §202(a)(1) reflects an intentional effort to confer the flexibility necessary to forestall such obsolescence. See *Pennsylvania Dept. of Corrections* v. *Yeskey*, 524 U. S. 206, 212 (1998) ("[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth" (internal quotation marks omitted)). Because greenhouse gases fit well within the Clean Air Act's capacious definition of "air pollutant," we hold that EPA has the statutory authority to regulate the emission of such gases from new motor vehicles.

VII

The alternative basis for EPA's decision—that even if it does have statutory authority to regulate greenhouse gases, it would be unwise to do so at this time—rests on reasoning divorced from the statutory text. While the statute does condition the exercise of EPA's authority on its formation of a "judgment," 42 U. S. C. §7521(a)(1), that judgment must relate to whether an air pollutant "cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to en-

danger public health or welfare," *ibid.* Put another way, the use of the word "judgment" is not a roving license to ignore the statutory text. It is but a direction to exercise discretion within defined statutory limits.

If EPA makes a finding of endangerment, the Clean Air Act requires the Agency to regulate emissions of the deleterious pollutant from new motor vehicles. *Ibid.* (stating that "[EPA] shall by regulation prescribe . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles"). EPA no doubt has significant latitude as to the manner, timing, content, and coordination of its regulations with those of other agencies. But once EPA has responded to a petition for rulemaking, its reasons for action or inaction must conform to the authorizing statute. Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do. *Ibid.* To the extent that this constrains agency discretion to pursue other priorities of the Administrator or the President, this is the congressional design.

EPA has refused to comply with this clear statutory command. Instead, it has offered a laundry list of reasons not to regulate. For example, EPA said that a number of voluntary Executive Branch programs already provide an effective response to the threat of global warming, 68 Fed. Reg. 52932, that regulating greenhouse gases might impair the President's ability to negotiate with "key developing nations" to reduce emissions, *id.*, at 52931, and that curtailing motor-vehicle emissions would reflect "an inefficient, piecemeal approach to address the climate change issue," *ibid.*

Although we have neither the expertise nor the authority to evaluate these policy judgments, it is evident they have nothing to do with whether greenhouse gas emissions contribute to climate change. Still less do they amount to a

reasoned justification for declining to form a scientific judgment. In particular, while the President has broad authority in foreign affairs, that authority does not extend to the refusal to execute domestic laws. In the Global Climate Protection Act of 1987, Congress authorized the State Department—not EPA—to formulate United States foreign policy with reference to environmental matters relating to climate. See § 1103(c), 101 Stat. 1409. EPA has made no showing that it issued the ruling in question here after consultation with the State Department. Congress did direct EPA to consult with other agencies in the formulation of its policies and rules, but the State Department is absent from that list. § 1103(b).

Nor can EPA avoid its statutory obligation by noting the uncertainty surrounding various features of climate change and concluding that it would therefore be better not to regulate at this time. See 68 Fed. Reg. 52930–52931. If the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming, EPA must say so. That EPA would prefer not to regulate greenhouse gases because of some residual uncertainty—which, contrary to JUSTICE SCALIA's apparent belief, *post*, at 553–555, is in fact all that it said, see 68 Fed. Reg. 52929–52930 ("We do not believe . . . that it would be either effective or appropriate for EPA *to establish [greenhouse gas] standards for motor vehicles* at this time" (emphasis added))—is irrelevant. The statutory question is whether sufficient information exists to make an endangerment finding.

In short, EPA has offered no reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change. Its action was therefore "arbitrary, capricious, . . . or otherwise not in accordance with law." 42 U. S. C. § 7607(d)(9)(A). We need not and do not reach the question whether on remand EPA must make an endangerment finding, or whether policy concerns can inform

EPA's actions in the event that it makes such a finding. Cf. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S., at 843–844. We hold only that EPA must ground its reasons for action or inaction in the statute.

VIII

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

CHIEF JUSTICE ROBERTS, with whom JUSTICE SCALIA, JUSTICE THOMAS, and JUSTICE ALITO join, dissenting.

Global warming may be a "crisis," even "the most pressing environmental problem of our time." Pet. for Cert. 26, 22. Indeed, it may ultimately affect nearly everyone on the planet in some potentially adverse way, and it may be that governments have done too little to address it. It is not a problem, however, that has escaped the attention of policymakers in the Executive and Legislative Branches of our Government, who continue to consider regulatory, legislative, and treaty-based means of addressing global climate change.

Apparently dissatisfied with the pace of progress on this issue in the elected branches, petitioners have come to the courts claiming broad-ranging injury, and attempting to tie that injury to the Government's alleged failure to comply with a rather narrow statutory provision. I would reject these challenges as nonjusticiable. Such a conclusion involves no judgment on whether global warming exists, what causes it, or the extent of the problem. Nor does it render petitioners without recourse. This Court's standing jurisprudence simply recognizes that redress of grievances of the sort at issue here "is the function of Congress and the Chief Executive," not the federal courts. *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 576 (1992). I would vacate the judg-

ment below and remand for dismissal of the petitions for review.

I

Article III, § 2, of the Constitution limits the federal judicial power to the adjudication of "Cases" and "Controversies." "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 341 (2006). "Standing to sue is part of the common understanding of what it takes to make a justiciable case," *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 102 (1998), and has been described as "an essential and unchanging part of the case-or-controversy requirement of Article III," *Defenders of Wildlife*, *supra*, at 560.

Our modern framework for addressing standing is familiar: "A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *DaimlerChrysler*, *supra*, at 342 (quoting *Allen* v. *Wright*, 468 U. S. 737, 751 (1984); internal quotation marks omitted). Applying that standard here, petitioners bear the burden of alleging an injury that is fairly traceable to the Environmental Protection Agency's failure to promulgate new motor vehicle greenhouse gas emission standards, and that is likely to be redressed by the prospective issuance of such standards.

Before determining whether petitioners can meet this familiar test, however, the Court changes the rules. It asserts that "States are not normal litigants for the purposes of invoking federal jurisdiction," and that given "Massachusetts' stake in protecting its quasi-sovereign interests, the Commonwealth is entitled to *special solicitude* in our standing analysis." *Ante*, at 518, 520 (emphasis added).

Relaxing Article III standing requirements because asserted injuries are pressed by a State, however, has no basis in our jurisprudence, and support for any such "special solicitude" is conspicuously absent from the Court's opinion. The general judicial review provision cited by the Court, 42

U. S. C. § 7607(b)(1), affords States no special rights or status. The Court states that "Congress has ordered EPA to protect Massachusetts (among others)" through the statutory provision at issue, § 7521(a)(1), and that "Congress has . . . recognized a concomitant procedural right to challenge the rejection of its rulemaking petition as arbitrary and capricious." *Ante*, at 519, 520. The reader might think from this unfortunate phrasing that Congress said something about the rights of States in this particular provision of the statute. Congress knows how to do that when it wants to, see, *e. g.*, § 7426(b) (affording States the right to petition EPA to directly regulate certain sources of pollution), but it has done nothing of the sort here. Under the law on which petitioners rely, Congress treated public and private litigants exactly the same.

Nor does the case law cited by the Court provide any support for the notion that Article III somehow implicitly treats public and private litigants differently. The Court has to go back a full century in an attempt to justify its novel standing rule, but even there it comes up short. The Court's analysis hinges on *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230 (1907)—a case that did indeed draw a distinction between a State and private litigants, but solely with respect to available remedies. The case had nothing to do with Article III standing.

In *Tennessee Copper*, the State of Georgia sought to enjoin copper companies in neighboring Tennessee from discharging pollutants that were inflicting "a wholesale destruction of forests, orchards and crops" in bordering Georgia counties. *Id.*, at 236. Although the State owned very little of the territory allegedly affected, the Court reasoned that Georgia—in its capacity as a "*quasi*-sovereign"—"has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain." *Id.*, at 237. The Court explained that while "[t]he very elements that would be relied upon in a suit between fellow-citizens as a ground for equitable relief [were] wanting," a State "is not lightly to be re-

quired to give up *quasi*-sovereign rights for pay." *Ibid.* Thus while a complaining private litigant would have to make do with a *legal* remedy—one "for pay"—the State was entitled to *equitable* relief. See *id.*, at 237–238.

In contrast to the present case, there was no question in *Tennessee Copper* about Article III injury. See *id.*, at 238–239. There was certainly no suggestion that the State could show standing where the private parties could not; there was no dispute, after all, that the private landowners had "an action at law." *Id.*, at 238. *Tennessee Copper* has since stood for nothing more than a State's right, in an original jurisdiction action, to sue in a representative capacity as *parens patriae*. See, *e. g.*, *Maryland* v. *Louisiana*, 451 U. S. 725, 737 (1981). Nothing about a State's ability to sue in that capacity dilutes the bedrock requirement of showing injury, causation, and redressability to satisfy Article III.

A claim of *parens patriae* standing is distinct from an allegation of direct injury. See *Wyoming* v. *Oklahoma*, 502 U. S. 437, 448–449, 451 (1992). Far from being a substitute for Article III injury, *parens patriae* actions raise an additional hurdle for a state litigant: the articulation of a "quasi-sovereign interest" "*apart* from the interests of particular private parties." *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico ex rel. Barez*, 458 U. S. 592, 607 (1982) (emphasis added) (cited *ante*, at 519). Just as an association suing on behalf of its members must show not only that it represents the members but that at least one satisfies Article III requirements, so too a State asserting quasi-sovereign interests as *parens patriae* must still show that its citizens satisfy Article III. Focusing on Massachusetts's interests as quasi-sovereign makes the required showing here harder, not easier. The Court, in effect, takes what has always been regarded as a *necessary* condition for *parens patriae* standing—a quasi-sovereign interest—and converts it into a *sufficient* showing for purposes of Article III.

What is more, the Court's reasoning falters on its own terms. The Court asserts that Massachusetts is entitled to "special solicitude" due to its "quasi-sovereign interests," *ante*, at 520, but then applies our Article III standing test to the asserted injury of the Commonwealth's loss of coastal property. See *ante*, at 522 (concluding that Massachusetts "has alleged a particularized injury *in its capacity as a landowner*" (emphasis added)). In the context of *parens patriae* standing, however, we have characterized state ownership of land as a "nonsovereign interes[t]" because a State "is likely to have the same interests as other similarly situated proprietors." *Alfred L. Snapp & Son*, *supra*, at 601.

On top of everything else, the Court overlooks the fact that our cases cast significant doubt on a State's standing to assert a quasi-sovereign interest—as opposed to a direct injury—against the Federal Government. As a general rule, we have held that while a State might assert a quasi-sovereign right as *parens patriae* "for the protection of its citizens, it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them." *Massachusetts* v. *Mellon*, 262 U. S. 447, 485–486 (1923) (citation omitted); see also *Alfred L. Snapp & Son*, *supra*, at 610, n. 16.

All of this presumably explains why petitioners never cited *Tennessee Copper* in their briefs before this Court or the D. C. Circuit. It presumably explains why not one of the legion of *amici* supporting petitioners ever cited the case. And it presumably explains why not one of the three judges writing below ever cited the case either. Given that one purpose of the standing requirement is "'to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination,'" *ante*, at 517 (quoting *Baker* v. *Carr*, 369 U. S. 186, 204 (1962)), it is ironic that the Court today adopts a new theory

of Article III standing for States without the benefit of briefing or argument on the point.[1]

II

It is not at all clear how the Court's "special solicitude" for Massachusetts plays out in the standing analysis, except as an implicit concession that petitioners cannot establish standing on traditional terms. But the status of Massachusetts as a State cannot compensate for petitioners' failure to demonstrate injury in fact, causation, and redressability.

When the Court actually applies the three-part test, it focuses, as did the dissent below, see 415 F. 3d 50, 64 (CADC 2005) (opinion of Tatel, J.), on the Commonwealth's asserted loss of coastal land as the injury in fact. If petitioners rely on loss of land as the Article III injury, however, they must ground the rest of the standing analysis in that specific injury. That alleged injury must be "concrete and particularized," *Defenders of Wildlife*, 504 U. S., at 560, and "distinct and palpable," *Allen*, 468 U. S., at 751 (internal quotation marks omitted). Central to this concept of "particularized" injury is the requirement that a plaintiff be affected in a "personal and individual way," *Defenders of Wildlife*, 504

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[1] The Court seems to think we do not recognize that *Tennessee Copper* is a case about *parens patriae* standing, *ante*, at 520–521, n. 17, but we have no doubt about that. The point is that nothing in our cases (or Hart & Wechsler) suggests that the prudential requirements for *parens patriae* standing, see *Republic of Venezuela* v. *Philip Morris Inc.*, 287 F. 3d 192, 199, n. (CADC 2002) (observing that "*parens patriae* is merely a species of prudential standing" (internal quotation marks omitted)), can somehow substitute for, or alter the content of, the "irreducible constitutional minimum" requirements of injury in fact, causation, and redressability under Article III. *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560 (1992).

Georgia v. *Pennsylvania R. Co.*, 324 U. S. 439 (1945), is not to the contrary. As the caption makes clear enough, the fact that a State may assert rights under a federal statute as *parens patriae* in no way refutes our clear ruling that "[a] State does not have standing as *parens patriae* to bring an action against the Federal Government." *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico ex rel. Barez*, 458 U. S. 592, 610, n. 16 (1982).

U. S., at 560, n. 1, and seek relief that "directly and tangibly benefits him" in a manner distinct from its impact on "the public at large," *id.*, at 573–574. Without "particularized injury, there can be no confidence of 'a real need to exercise the power of judicial review' or that relief can be framed 'no broader than required by the precise facts to which the court's ruling would be applied.'" *Warth* v. *Seldin*, 422 U. S. 490, 508 (1975) (quoting *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U. S. 208, 221–222 (1974)).

The very concept of global warming seems inconsistent with this particularization requirement. Global warming is a phenomenon "harmful to humanity at large," 415 F. 3d, at 60 (Sentelle, J., dissenting in part and concurring in judgment), and the redress petitioners seek is focused no more on them than on the public generally—it is literally to change the atmosphere around the world.

If petitioners' particularized injury is loss of coastal land, it is also that injury that must be "actual or imminent, not conjectural or hypothetical," *Defenders of Wildlife*, *supra*, at 560 (internal quotation marks omitted), "real and immediate," *Los Angeles* v. *Lyons*, 461 U. S. 95, 102 (1983) (internal quotation marks omitted), and "certainly impending," *Whitmore* v. *Arkansas*, 495 U. S. 149, 158 (1990) (internal quotation marks omitted).

As to "actual" injury, the Court observes that "global sea levels rose somewhere between 10 and 20 centimeters over the 20th century as a result of global warming" and that "[t]hese rising seas have already begun to swallow Massachusetts' coastal land." *Ante*, at 522. But none of petitioners' declarations supports that connection. One declaration states that "a rise in sea level due to climate change is occurring on the coast of Massachusetts, in the metropolitan Boston area," but there is no elaboration. 2 Petitioners' Standing Appendix in No. 03–1361, etc. (CADC), p. 196 (Stdg. App.). And the declarant goes on to identify a "significan[t]" *non*-global-warming cause of Boston's rising sea level: land

subsidence. *Id.*, at 197; see also *id.*, at 216. Thus, aside from a single conclusory statement, there is nothing in petitioners' 43 standing declarations and accompanying exhibits to support an inference of actual loss of Massachusetts coastal land from 20th-century global sea level increases. It is pure conjecture.

The Court's attempts to identify "imminent" or "certainly impending" loss of Massachusetts coastal land fares no better. See *ante*, at 522–523. One of petitioners' declarants predicts global warming will cause sea level to rise by 20 to 70 centimeters *by the year 2100*. Stdg. App. 216. Another uses a computer modeling program to map the Commonwealth's coastal land and its current elevation, and calculates that the high-end estimate of sea level rise would result in the loss of significant state-owned coastal land. *Id.*, at 179. But the computer modeling program has a conceded average error of about 30 centimeters and a maximum observed error of 70 centimeters. *Id.*, at 177–178. As an initial matter, if it is possible that the model underrepresents the elevation of coastal land to an extent equal to or in excess of the projected sea level rise, it is difficult to put much stock in the predicted loss of land. But even placing that problem to the side, accepting a century-long time horizon and a series of compounded estimates renders requirements of imminence and immediacy utterly toothless. See *Defenders of Wildlife*, *supra*, at 565, n. 2 (while the concept of "'imminence'" in standing doctrine is "somewhat elastic," it can be "stretched beyond the breaking point"). "Allegations of possible future injury do not satisfy the requirements of Art. III. A threatened injury must be *certainly impending* to constitute injury in fact." *Whitmore*, *supra*, at 158 (internal quotation marks omitted; emphasis added).

III

Petitioners' reliance on Massachusetts's loss of coastal land as their injury in fact for standing purposes creates insur-

mountable problems for them with respect to causation and redressability. To establish standing, petitioners must show a causal connection between that specific injury and the lack of new motor vehicle greenhouse gas emission standards, and that the promulgation of such standards would likely redress that injury. As is often the case, the questions of causation and redressability overlap. See *Allen*, 468 U. S., at 753, n. 19 (observing that the two requirements were "initially articulated by this Court as two facets of a single causation requirement" (internal quotation marks omitted)). And importantly, when a party is challenging the Government's allegedly unlawful regulation, or lack of regulation, of a third party, satisfying the causation and redressability requirements becomes "substantially more difficult." *Defenders of Wildlife*, 504 U. S., at 562 (internal quotation marks omitted); see also *Warth*, *supra*, at 504–505.

Petitioners view the relationship between their injuries and EPA's failure to promulgate new motor vehicle greenhouse gas emission standards as simple and direct: Domestic motor vehicles emit carbon dioxide and other greenhouse gases. Worldwide emissions of greenhouse gases contribute to global warming and therefore also to petitioners' alleged injuries. Without the new vehicle standards, greenhouse gas emissions—and therefore global warming and its attendant harms—have been higher than they otherwise would have been; once EPA changes course, the trend will be reversed.

The Court ignores the complexities of global warming, and does so by now disregarding the "particularized" injury it relied on in step one, and using the dire nature of global warming itself as a bootstrap for finding causation and redressability. First, it is important to recognize the extent of the emissions at issue here. Because local greenhouse gas emissions disperse throughout the atmosphere and remain there for anywhere from 50 to 200 years, it is global emissions data that are relevant. See App. to Pet. for Cert.

A–73. According to one of petitioners' declarations, domestic motor vehicles contribute about 6 percent of global carbon dioxide emissions and 4 percent of global greenhouse gas emissions. Stdg. App. 232. The amount of global emissions at issue here is smaller still; §202(a)(1) of the Clean Air Act covers only *new* motor vehicles and *new* motor vehicle engines, so petitioners' desired emission standards might reduce only a fraction of 4 percent of global emissions.

This gets us only to the relevant greenhouse gas emissions; linking them to global warming and ultimately to petitioners' alleged injuries next requires consideration of further complexities. As EPA explained in its denial of petitioners' request for rulemaking,

> "predicting future climate change necessarily involves a complex web of economic and physical factors including: our ability to predict future global anthropogenic emissions of [greenhouse gases] and aerosols; the fate of these emissions once they enter the atmosphere (e. g., what percentage are absorbed by vegetation or are taken up by the oceans); the impact of those emissions that remain in the atmosphere on the radiative properties of the atmosphere; changes in critically important climate feedbacks (e. g., changes in cloud cover and ocean circulation); changes in temperature characteristics (e. g., average temperatures, shifts in daytime and evening temperatures); changes in other climatic parameters (e. g., shifts in precipitation, storms); and ultimately the impact of such changes on human health and welfare (e. g., increases or decreases in agricultural productivity, human health impacts)." App. to Pet. for Cert. A–83 through A–84.

Petitioners are never able to trace their alleged injuries back through this complex web to the fractional amount of global emissions that might have been limited with EPA standards. In light of the bit-part domestic new motor vehi-

cle greenhouse gas emissions have played in what petitioners describe as a 150-year global phenomenon, and the myriad additional factors bearing on petitioners' alleged injury—the loss of Massachusetts coastal land—the connection is far too speculative to establish causation.

IV

Redressability is even more problematic. To the tenuous link between petitioners' alleged injury and the indeterminate fractional domestic emissions at issue here, add the fact that petitioners cannot meaningfully predict what will come of the 80 percent of global greenhouse gas emissions that originate outside the United States. As the Court acknowledges, "developing countries such as China and India are poised to increase greenhouse gas emissions substantially over the next century," *ante*, at 525–526, so the domestic emissions at issue here may become an increasingly marginal portion of global emissions, and any decreases produced by petitioners' desired standards are likely to be overwhelmed many times over by emissions increases elsewhere in the world.

Petitioners offer declarations attempting to address this uncertainty, contending that "[i]f the U. S. takes steps to reduce motor vehicle emissions, other countries are very likely to take similar actions regarding their own motor vehicles using technology developed in response to the U. S. program." Stdg. App. 220; see also *id.*, at 311–312. In other words, do not worry that other countries will contribute far more to global warming than will U. S. automobile emissions; someone is bound to invent something, and places like the People's Republic of China or India will surely require use of the new technology, regardless of cost. The Court previously has explained that when the existence of an element of standing "depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume

either to control or to predict," a party must present facts supporting an assertion that the actor will proceed in such a manner. *Defenders of Wildlife*, 504 U. S., at 562 (quoting *ASARCO Inc.* v. *Kadish*, 490 U. S. 605, 615 (1989) (opinion of KENNEDY, J.); internal quotation marks omitted). The declarations' conclusory (not to say fanciful) statements do not even come close.

No matter, the Court reasons, because *any* decrease in domestic emissions will "slow the pace of global emissions increases, no matter what happens elsewhere." *Ante*, at 526. Every little bit helps, so Massachusetts can sue over any little bit.

The Court's sleight of hand is in failing to link up the different elements of the three-part standing test. What must be *likely* to be redressed is the particular injury in fact. The injury the Court looks to is the asserted loss of land. The Court contends that regulating domestic motor vehicle emissions will reduce carbon dioxide in the atmosphere, *and therefore* redress Massachusetts's injury. But even if regulation *does* reduce emissions—to some indeterminate degree, given events elsewhere in the world—the Court never explains why that makes it *likely* that the injury in fact—the loss of land—will be redressed. Schoolchildren know that a kingdom might be lost "all for the want of a horseshoe nail," but "likely" redressability is a different matter. The realities make it pure conjecture to suppose that EPA regulation of new automobile emissions will *likely* prevent the loss of Massachusetts coastal land.

V

Petitioners' difficulty in demonstrating causation and redressability is not surprising given the evident mismatch between the source of their alleged injury—catastrophic global warming—and the narrow subject matter of the Clean Air Act provision at issue in this suit. The mismatch suggests

that petitioners' true goal for this litigation may be more symbolic than anything else. The constitutional role of the courts, however, is to decide concrete cases—not to serve as a convenient forum for policy debates. See *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 472 (1982) ("[Standing] tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action").

When dealing with legal doctrine phrased in terms of what is "fairly" traceable or "likely" to be redressed, it is perhaps not surprising that the matter is subject to some debate. But in considering how loosely or rigorously to define those adverbs, it is vital to keep in mind the purpose of the inquiry. The limitation of the judicial power to cases and controversies "is crucial in maintaining the tripartite allocation of power set forth in the Constitution." *DaimlerChrysler*, 547 U. S., at 341 (internal quotation marks omitted). In my view, the Court today—addressing Article III's "core component of standing," *Defenders of Wildlife*, *supra*, at 560—fails to take this limitation seriously.

To be fair, it is not the first time the Court has done so. Today's decision recalls the previous high-water mark of diluted standing requirements, *United States* v. *Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U. S. 669 (1973). *SCRAP* involved "[p]robably the most attenuated injury conferring Art. III standing" and "surely went to the very outer limit of the law"—until today. *Whitmore*, 495 U. S., at 158–159; see also *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 889 (1990) (*SCRAP* "has never since been emulated by this Court"). In *SCRAP*, the Court based an environmental group's standing to challenge a railroad freight rate surcharge on the group's allegation that

increases in railroad rates would cause an increase in the use of nonrecyclable goods, resulting in the increased need for natural resources to produce such goods. According to the group, some of these resources might be taken from the Washington area, resulting in increased refuse that might find its way into area parks, harming the group's members. 412 U. S., at 688.

Over time, *SCRAP* became emblematic not of the looseness of Article III standing requirements, but of how utterly manipulable they are if not taken seriously as a matter of judicial self-restraint. *SCRAP* made standing seem a lawyer's game, rather than a fundamental limitation ensuring that courts function as courts and not intrude on the politically accountable branches. Today's decision is *SCRAP* for a new generation.[2]

Perhaps the Court recognizes as much. How else to explain its need to devise a new doctrine of state standing to support its result? The good news is that the Court's "special solicitude" for Massachusetts limits the future applicability of the diluted standing requirements applied in this case. The bad news is that the Court's self-professed relaxation of those Article III requirements has caused us to transgress "the proper—and properly limited—role of the courts in a

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[2] The difficulty with *SCRAP*, and the reason it has not been followed, is not the portion cited by the Court. See *ante*, at 526–527, n. 24. Rather, it is the *attenuated* nature of the injury there, and here, that is so troubling. Even in *SCRAP*, the Court noted that what was required was "something more than an ingenious academic exercise in the conceivable," 412 U. S., at 688, and we have since understood the allegation there to have been "that the string of occurrences alleged would happen *immediately*." *Whitmore* v. *Arkansas*, 495 U. S. 149, 159 (1990) (emphasis added). That is hardly the case here.

The Court says it is "quite wrong" to compare petitioners' challenging "EPA's parsimonious construction of the Clean Air Act to a mere 'lawyer's game.'" *Ante*, at 527, n. 24. Of course it is not the legal challenge that is merely "an ingenious academic exercise in the conceivable," *SCRAP*, *supra*, at 688, but the assertions made in support of standing.

democratic society." *Allen*, 468 U. S., at 750 (internal quotation marks omitted).

I respectfully dissent.

JUSTICE SCALIA, with whom THE CHIEF JUSTICE, JUSTICE THOMAS, and JUSTICE ALITO join, dissenting.

I join THE CHIEF JUSTICE's opinion in full, and would hold that this Court has no jurisdiction to decide this case because petitioners lack standing. The Court having decided otherwise, it is appropriate for me to note my dissent on the merits.

I

A

The provision of law at the heart of this case is §202(a)(1) of the Clean Air Act (CAA or Act), which provides that the Administrator of the Environmental Protection Agency (EPA) "shall by regulation prescribe . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which *in his judgment* cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U. S. C. §7521(a)(1) (emphasis added). As the Court recognizes, the statute "condition[s] the exercise of EPA's authority on its formation of a 'judgment.'" *Ante*, at 532. There is no dispute that the Administrator has made no such judgment in this case. See *ante*, at 534 ("We need not and do not reach the question whether on remand EPA must make an endangerment finding"); 68 Fed. Reg. 52929 (2003) ("[N]o Administrator has made a finding under any of the CAA's regulatory provisions that CO_2 meets the applicable statutory criteria for regulation").

The question thus arises: Does anything *require* the Administrator to make a "judgment" whenever a petition for rulemaking is filed? Without citation of the statute or any other authority, the Court says yes. Why is that so? When

Congress wishes to make private action force an agency's hand, it knows how to do so. See, *e. g.*, *Brock* v. *Pierce County*, 476 U. S. 253, 254–255 (1986) (discussing the Comprehensive Employment and Training Act (CETA), 92 Stat. 1926, 29 U. S. C. §816(b) (1976 ed., Supp. V), which "provide[d] that the Secretary of Labor 'shall' issue a final determination as to the misuse of CETA funds by a grant recipient within 120 days after receiving a complaint alleging such misuse"). Where does the CAA say that the EPA Administrator is required to come to a decision on this question whenever a rulemaking petition is filed? The Court points to no such provision because none exists.

Instead, the Court invents a multiple-choice question that the EPA Administrator must answer when a petition for rulemaking is filed. The Administrator must exercise his judgment in one of three ways: (a) by concluding that the pollutant *does* cause, or contribute to, air pollution that endangers public welfare (in which case EPA is required to regulate); (b) by concluding that the pollutant *does not* cause, or contribute to, air pollution that endangers public welfare (in which case EPA is *not* required to regulate); or (c) by "provid[ing] some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether" greenhouse gases endanger public welfare, *ante*, at 533 (in which case EPA is *not* required to regulate).

I am willing to assume, for the sake of argument, that the Administrator's discretion in this regard is not entirely unbounded—that if he has no reasonable basis for deferring judgment he must grasp the nettle at once. The Court, however, with no basis in text or precedent, rejects all of EPA's stated "policy judgments" as not "amount[ing] to a reasoned justification," *ante*, at 533–534, effectively narrowing the universe of potential reasonable bases to a single one: Judgment can be delayed *only* if the Administrator concludes that "the scientific uncertainty is [too] profound." *Ante*, at 534. The Administrator is precluded from concluding *for other reasons* "that it would . . . be better not to regulate

at this time." *Ibid.*[1] Such other reasons—perfectly valid reasons—were set forth in the Agency's statement.

> "We do not believe . . . that it would be either effective or appropriate for EPA to establish [greenhouse gas] standards for motor vehicles at this time. As described in detail below, the President has laid out a comprehensive approach to climate change that calls for near-term voluntary actions and incentives along with programs aimed at reducing scientific uncertainties and encouraging technological development so that the government may effectively and efficiently address the climate change issue over the long term.
>
> . . . . . .
>
> "[E]stablishing [greenhouse gas] emission standards for U. S. motor vehicles at this time would . . . result in an inefficient, piecemeal approach to addressing the climate change issue. The U. S. motor vehicle fleet is one of many sources of [greenhouse gas] emissions both here and abroad, and different [greenhouse gas] emission sources face different technological and financial challenges in reducing emissions. A sensible regulatory scheme would require that all significant sources and sinks of [greenhouse gas] emissions be considered in deciding how best to achieve any needed emission reductions.
>
> "Unilateral EPA regulation of motor vehicle [greenhouse gas] emissions could also weaken U. S. efforts to persuade developing countries to reduce the [greenhouse gas] intensity of their economies. Considering the large populations and growing economies of some developing countries, increases in their [greenhouse gas] emissions could quickly overwhelm the effects of [green-

[1] The Court's way of putting it is, of course, not quite accurate. The issue is whether it would be better *to defer the decision about whether to exercise judgment*. This has the *effect* of deferring regulation but is quite a different determination.

> house gas] reduction measures in developed countries. Any potential benefit of EPA regulation could be lost to the extent other nations decided to let their emissions significantly increase in view of U. S. emissions reductions. Unavoidably, climate change raises important foreign policy issues, and it is the President's prerogative to address them." 68 Fed. Reg. 52929–52931 (footnote omitted).

The Court dismisses this analysis as "rest[ing] on reasoning divorced from the statutory text." *Ante*, at 532. "While the statute does condition the exercise of EPA's authority on its formation of a 'judgment,' . . . that judgment must relate to whether an air pollutant 'cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare.'" *Ante*, at 532–533. True but irrelevant. When the Administrator *makes* a judgment whether to regulate greenhouse gases, that judgment must relate to whether they are air pollutants that "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U. S. C. § 7521(a)(1). But the statute says *nothing at all* about the reasons for which the Administrator may *defer* making a judgment—the permissible reasons for deciding not to grapple with the issue at the present time. Thus, the various "policy" rationales, *ante*, at 533, that the Court criticizes are not "divorced from the statutory text," *ante*, at 532, except in the sense that the statutory text is silent, as texts are often silent about permissible reasons for the exercise of agency discretion. The reasons EPA gave are surely considerations executive agencies *regularly* take into account (and *ought* to take into account) when deciding whether to consider entering a new field: the impact such entry would have on other Executive Branch programs and on foreign policy. There is no basis in law for the Court's imposed limitation.

EPA's interpretation of the discretion conferred by the statutory reference to "its judgment" is not only reasonable,

it is the most natural reading of the text. The Court nowhere explains why this interpretation is incorrect, let alone why it is not entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). As the Administrator acted within the law in declining to make a "judgment" for the policy reasons above set forth, I would uphold the decision to deny the rulemaking petition on that ground alone.

B

Even on the Court's own terms, however, the same conclusion follows. As mentioned above, the Court gives EPA the option of determining that the science is too uncertain to allow it to form a "judgment" as to whether greenhouse gases endanger public welfare. Attached to this option (on what basis is unclear) is an essay requirement: "If," the Court says, "the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming, EPA must say so." *Ante*, at 534. But EPA *has* said precisely that—and at great length, based on information contained in a 2001 report by the National Research Council (NRC) entitled Climate Change Science: An Analysis of Some Key Questions:

> "As the NRC noted in its report, concentrations of [greenhouse gases (GHGs)] are increasing in the atmosphere as a result of human activities (pp. 9–12). It also noted that '[a] diverse array of evidence points to a warming of global surface air temperatures' (p. 16). The report goes on to state, however, that '[b]ecause of the large and still uncertain level of natural variability inherent in the climate record and the uncertainties in the time histories of the various forcing agents (and particularly aerosols), a [causal] linkage between the buildup of [GHGs] in the atmosphere and the observed climate changes during the 20th century cannot be unequivocally established. The fact that the

magnitude of the observed warming is large in comparison to natural variability as simulated in climate models is suggestive of such a linkage, but it does not constitute proof of one because the model simulations could be deficient in natural variability on the decadal to century time scale' (p. 17).

"The NRC also observed that 'there is considerable uncertainty in current understanding of how the climate system varies naturally and reacts to emissions of [GHGs] and aerosols' (p. 1). As a result of that uncertainty, the NRC cautioned that 'current estimate of the magnitude of future warming should be regarded as tentative and subject to future adjustments (either upward or downward).' *Id.* It further advised that '[r]educing the wide range of uncertainty inherent in current model predictions of global climate change will require major advances in understanding and modeling of both (1) the factors that determine atmospheric concentrations of [GHGs] and aerosols and (2) the so-called "feedbacks" that determine the sensitivity of the climate system to a prescribed increase in [GHGs].' *Id.*

"The science of climate change is extraordinarily complex and still evolving. Although there have been substantial advances in climate change science, there continue to be important uncertainties in our understanding of the factors that may affect future climate change and how it should be addressed. As the NRC explained, predicting future climate change necessarily involves a complex web of economic and physical factors including: Our ability to predict future global anthropogenic emissions of GHGs and aerosols; the fate of these emissions once they enter the atmosphere (*e. g.*, what percentage are absorbed by vegetation or are taken up by the oceans); the impact of those emissions that remain in the atmosphere on the radiative properties of the atmos-

> phere; changes in critically important climate feedbacks (*e. g.*, changes in cloud cover and ocean circulation); changes in temperature characteristics (*e. g.*, average temperatures, shifts in daytime and evening temperatures); changes in other climatic parameters (*e. g.*, shifts in precipitation, storms); and ultimately the impact of such changes on human health and welfare (*e. g.*, increases or decreases in agricultural productivity, human health impacts). The NRC noted, in particular, that '[t]he understanding of the relationships between weather/climate and human health is in its infancy and therefore the health consequences of climate change are poorly understood' (p. 20). Substantial scientific uncertainties limit our ability to assess each of these factors and to separate out those changes resulting from natural variability from those that are directly the result of increases in anthropogenic GHGs.
>
> "Reducing the wide range of uncertainty inherent in current model predictions will require major advances in understanding and modeling of the factors that determine atmospheric concentrations of [GHGs] and aerosols, and the processes that determine the sensitivity of the climate system." 68 Fed. Reg. 52930.

I simply cannot conceive of what else the Court would like EPA to say.

II

A

Even before reaching its discussion of the word "judgment," the Court makes another significant error when it concludes that "§202(a)(1) of the Clean Air Act *authorizes* EPA to regulate greenhouse gas emissions from new motor vehicles in the event that it forms a 'judgment' that such emissions contribute to climate change." *Ante*, at 528 (emphasis added). For such authorization, the Court relies on

what it calls "the Clean Air Act's capacious definition of 'air pollutant.'" *Ante*, at 532.

"Air pollutant" is defined by the Act as "any air pollution agent or combination of such agents, including any physical, chemical, . . . substance or matter which is emitted into or otherwise enters the ambient air." 42 U. S. C. §7602(g). The Court is correct that "[c]arbon dioxide, methane, nitrous oxide, and hydrofluorocarbons," *ante*, at 529, fit within the second half of that definition: They are "physical, chemical, . . . substance[s] or matter which [are] emitted into or otherwise ente[r] the ambient air." But the Court mistakenly believes this to be the end of the analysis. In order to be an "air pollutant" under the Act's definition, the "substance or matter [being] emitted into . . . the ambient air" must also meet the *first* half of the definition—namely, it must be an "air pollution agent or combination of such agents." The Court simply pretends this half of the definition does not exist.

The Court's analysis faithfully follows the argument advanced by petitioners, which focuses on the word "including" in the statutory definition of "air pollutant." See Brief for Petitioners 13–14. As that argument goes, anything that *follows* the word "including" must necessarily be a subset of whatever *precedes* it. Thus, if greenhouse gases qualify under the phrase following the word "including," they must qualify under the phrase preceding it. Since greenhouse gases come within the capacious phrase "any physical, chemical, . . . substance or matter which is emitted into or otherwise enters the ambient air," they must also be "air pollution agent[s] or combination[s] of such agents," and therefore meet the definition of "air pollutant[s]."

That is certainly one possible interpretation of the statutory definition. The word "including" can indeed indicate that what follows will be an "illustrative" sampling of the general category that precedes the word. *Federal Land Bank of St. Paul* v. *Bismarck Lumber Co.*, 314 U. S. 95, 100

(1941). Often, however, the examples standing alone are broader than the general category, and must be viewed as limited in light of that category. The Government provides a helpful (and unanswered) example: "The phrase 'any American automobile, including any truck or minivan,' would not naturally be construed to encompass a foreign-manufactured [truck or] minivan." Brief for Federal Respondent 34. The general principle enunciated—that the speaker is talking about *American* automobiles—carries forward to the illustrative examples (trucks and minivans), and limits them accordingly, even though in isolation they are broader. Congress often uses the word "including" in this manner. In 28 U. S. C. §1782(a), for example, it refers to "a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation." Certainly this provision would not encompass criminal investigations underway in a *domestic* tribunal. See also, *e. g.*, 2 U. S. C. §54(a) ("The Clerk of the House of Representatives shall, at the request of a Member of the House of Representatives, furnish to the Member, for official use only, one set of a privately published annotated version of the United States Code, including supplements and pocket parts"); 22 U. S. C. §2304(b)(1) ("the relevant findings of appropriate international organizations, including nongovernmental organizations").

In short, the word "including" does not require the Court's (or the petitioners') result. It is perfectly reasonable to view the definition of "air pollutant" in its entirety: An air pollutant *can* be "any physical, chemical, . . . substance or matter which is emitted into or otherwise enters the ambient air," but only if it retains the general characteristic of being an "air pollution agent or combination of such agents." This is precisely the conclusion EPA reached: "[A] substance does not meet the CAA definition of 'air pollutant' simply because it is a 'physical, chemical, . . . substance or matter which is emitted into or otherwise enters the ambient air.' It must

also be an 'air pollution agent.'" 68 Fed. Reg. 52929, n. 3. See also *id.*, at 52928 ("The root of the definition indicates that for a substance to be an 'air pollutant,' it must be an 'agent' of 'air pollution' "). Once again, in the face of textual ambiguity, the Court's application of *Chevron* deference to EPA's interpretation of the word "including" is nowhere to be found.[2] Evidently, the Court defers only to those reasonable interpretations that it favors.

B

Using (as we ought to) EPA's interpretation of the definition of "air pollutant," we must next determine whether greenhouse gases are "agent[s]" of "air pollution." If so, the statute would authorize regulation; if not, EPA would lack authority.

Unlike "air pollutants," the term "air pollution" is not itself defined by the CAA; thus, once again we must accept EPA's interpretation of that ambiguous term, provided its interpretation is a "permissible construction of the statute." *Chevron*, 467 U. S., at 843. In this case, the petition for rulemaking asked EPA for "regulation of [greenhouse gas] emissions from motor vehicles to reduce the risk of global climate change." 68 Fed. Reg. 52925. Thus, in deciding whether it had authority to regulate, EPA had to determine whether the concentration of greenhouse gases assertedly responsible for "global climate change" qualifies as "air pollution." EPA began with the commonsense observation that the "[p]roblems associated with atmospheric concentrations

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[2] Not only is EPA's interpretation reasonable, it is far more plausible than the Court's alternative. As the Court correctly points out, "all airborne compounds of whatever stripe," *ante*, at 529, would qualify as "physical, chemical, . . . substance[s] or matter which [are] emitted into or otherwise ente[r] the ambient air," 42 U. S. C. § 7602(g). It follows that *everything* airborne, from Frisbees to flatulence, qualifies as an "air pollutant." This reading of the statute defies common sense.

of CO_2," *id.*, at 52927, bear little resemblance to what would naturally be termed "air pollution":

> "EPA's prior use of the CAA's general regulatory provisions provides an important context. Since the inception of the Act, EPA has used these provisions to address air pollution problems that occur primarily at ground level or near the surface of the earth. For example, national ambient air quality standards (NAAQS) established under CAA section 109 address concentrations of substances in the ambient air and the related public health and welfare problems. This has meant setting NAAQS for concentrations of ozone, carbon monoxide, particulate matter and other substances in the air near the surface of the earth, not higher in the atmosphere. . . . CO_2, by contrast, is fairly consistent in concentration throughout the world's atmosphere up to approximately the lower stratosphere." *Id.*, at 52926–52927.

In other words, regulating the buildup of CO_2 and other greenhouse gases in the upper reaches of the atmosphere, which is alleged to be causing global climate change, is not akin to regulating the concentration of some substance that is *polluting* the *air*.

We need look no further than the dictionary for confirmation that this interpretation of "air pollution" is eminently reasonable. The definition of "pollute," of course, is "[t]o make or render impure or unclean." Webster's New International Dictionary 1910 (2d ed. 1949). And the first three definitions of "air" are as follows: (1) "[t]he invisible, odorless, and tasteless mixture of gases which surrounds the earth"; (2) "[t]he body of the earth's atmosphere; esp., the part of it near the earth, as distinguished from the upper rarefied part"; (3) "[a] portion of air or of the air considered with respect to physical characteristics or as affecting the

senses." *Id.*, at 54. EPA's conception of "air pollution"—focusing on impurities in the "ambient air" "at ground level or near the surface of the earth"—is perfectly consistent with the natural meaning of that term.

In the end, EPA concluded that since "CAA authorization to regulate is generally based on a finding that an air pollutant causes or contributes to air pollution," 68 Fed. Reg. 52928, the concentrations of CO_2 and other greenhouse gases allegedly affecting the global climate are beyond the scope of CAA's authorization to regulate. "[T]he term 'air pollution' as used in the regulatory provisions cannot be interpreted to encompass global climate change." *Ibid.* Once again, the Court utterly fails to explain why this interpretation is incorrect, let alone so unreasonable as to be unworthy of *Chevron* deference.

* * *

The Court's alarm over global warming may or may not be justified, but it ought not distort the outcome of this litigation. This is a straightforward administrative-law case, in which Congress has passed a malleable statute giving broad discretion, not to us but to an executive agency. No matter how important the underlying policy issues at stake, this Court has no business substituting its own desired outcome for the reasoned judgment of the responsible agency.

Syllabus

ENVIRONMENTAL DEFENSE ET AL. *v.* DUKE ENERGY CORP. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 05–848. Argued November 1, 2006—Decided April 2, 2007

In the 1970s, Congress added two air pollution control schemes to the Clean Air Act (Act): New Source Performance Standards (NSPS) and Prevention of Significant Deterioration (PSD), each of which covers modified, as well as new, stationary sources of air pollution. The NSPS provisions define "modification" of such a source as a physical change to it, or a change in the method of its operation, that increases the amount of a pollutant discharged or emits a new one. 42 U. S. C. § 7411(a)(4). The PSD provisions require a permit before a "major emitting facility" can be "constructed," § 7475(a), and define such "construction" to include a "modification (as defined in [NSPS])," § 7479(2)(C). Despite this definitional identity, the Environmental Protection Agency's (EPA) regulations interpret "modification" one way for NSPS but differently for PSD. The NSPS regulations require a source to use the best available pollution-limiting technology, see *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 846, when a modification would increase the discharge of pollutants measured in kilograms per hour, 40 CFR § 60.14(a), but the 1980 PSD regulations require a permit for a modification only when it is a "major" one, § 51.166(b)(2)(i), and only when it would increase the actual annual emission of a pollutant above the actual average for the two prior years, § 51.166(b)(21)(ii).

After respondent Duke Energy Corporation replaced or redesigned the workings of some of its coal-fired electric generating units, the United States filed this enforcement action, claiming, among other things, that Duke violated the PSD provisions by doing the work without permits. Petitioner environmental groups intervened as plaintiffs and filed a complaint charging similar violations. Duke moved for summary judgment, asserting, *inter alia*, that none of its projects was a "major modification" requiring a PSD permit because none increased hourly emissions rates. Agreeing, the District Court entered summary judgment for Duke on all PSD claims. The Fourth Circuit affirmed, reasoning that Congress's decision to create identical statutory definitions of "modification" in the Act's NSPS and PSD provisions affirmatively mandated that this term be interpreted identically in the regulations promulgated under those provisions. When the court *sua sponte*

requested supplemental briefing on the relevance of this Court's decision in *Rowan Cos.* v. *United States*, 452 U. S. 247, 250, that the Government could not adopt different interpretations of the word "wages" in different statutory provisions, plaintiffs injected a new issue into the case, arguing that a claim that the 1980 PSD regulation exceeded statutory authority would be an attack on the regulation's validity that could not be raised in an enforcement proceeding, see 42 U. S. C. § 7607(b)(2), since judicial review for validity can be obtained only by a petition to the District of Columbia Circuit, generally within 60 days of EPA's rulemaking, § 7607(b)(1). The Fourth Circuit rejected this argument, ruling that its interpretation did not invalidate the PSD regulations because they can be interpreted to require an increase in the hourly emissions rate as an element of a major "modification."

Held: The Fourth Circuit's reading of the PSD regulations in an effort to conform them with their NSPS counterparts on "modification" amounted to the invalidation of the PSD regulations, which must comport with the Act's limits on judicial review of EPA regulations for validity. Pp. 573–582.

(a) Principles of statutory interpretation do not rigidly mandate identical regulation here. Because "[m]ost words have different shades of meaning and consequently may be variously construed, [even] when [they are] used more than once in the same statute or . . . section," the "natural presumption that identical words used in different parts of the same act are intended to have the same meaning . . . is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent." *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 433. A given term in the same statute may take on distinct characters from association with distinct statutory objects calling for different ways of implementation. The point is the same even when the terms share a common statutory definition, if it is general enough. See *Robinson* v. *Shell Oil Co.*, 519 U. S. 337, 343–344. *Robinson* is not inconsistent with *Rowan*, where the Court's invalidation of the differing interpretations of "wages," 452 U. S., at 252, turned not on the fact that a "substantially identical" definition of that word appeared in each of the statutory provisions at issue, but on the failure of the regulations in question to serve Congress's manifest "concern for the interest of simplicity and ease of administration," *id.*, at 255. In fact, in a case close to *Rowan*'s facts, the Court recently declined to follow a categorical rule of resolving ambiguities in identical statutory terms identically regardless of their surroundings, *United States* v. *Cleveland Indians Baseball Co.*, 532 U. S.

200, 213, but instead accorded "substantial judicial deference" to an agency's "longstanding," "reasonable," and differing interpretations of the statutory term at issue, *id.*, at 218–220. It makes no difference here that the Act does not merely repeat the same definition in its NSPS and PSD provisions, but that the PSD provisions refer back to the section defining "modification" for NSPS purposes. Nothing in the text or legislative history of the statutory amendment that added the NSPS cross-reference suggests that Congress meant to eliminate customary agency discretion to resolve questions about a statutory definition by looking to the surroundings in which the defined term appears. EPA's construction need do no more than fall within the outer limits of what is reasonable, as set by the Act's common definition. Pp. 573–576.

(b) The Fourth Circuit's construction of the 1980 PSD regulations to conform them to their NSPS counterparts was not a permissible reading of their terms. The PSD regulations clearly do not define a "major modification" in terms of an increase in the "hourly emissions rate." On its face, the definitional section specifies no rate at all, hourly or annual, merely requiring a "physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any" regulated pollutant. 40 CFR §51.166(b)(2)(i). But even when the regulations mention a rate, it is annual, not hourly. See, *e. g.*, §51.166(b)(23)(i). Further at odds with the idea that hourly rate is relevant is the mandate that "[a]ctual emissions shall be calculated using the unit's actual operating hours," §51.166(b)(21)(ii), since "actual emissions" must be measured in a manner looking to the number of hours the unit is or probably will be actually running. The Court of Appeals's reasons for its different view are no match for these textual differences. Consequently, the Court of Appeals's construction of the 1980 PSD regulations must be seen as an implicit invalidation of those regulations, a form of judicial review implicating the provisions of 42 U. S. C. §7607(b), which limit challenges to the validity of a regulation during enforcement proceedings when such review "could have been obtained" in the Court of Appeals for the District of Columbia Circuit within 60 days of EPA rulemaking. Because the Court of Appeals did not believe that its analysis reached validity, it did not consider the applicability or effect of that limitation here. The Court has no occasion itself at this point to consider the significance of §7607(b). Pp. 577–581.

(c) Duke's claim that, even assuming the Act and the 1980 regulations authorize EPA to construe a PSD "modification" as it has done, EPA has been inconsistent in its positions and is now retroactively targeting 20 years of accepted practice was not addressed below. To the extent

the claim is not procedurally foreclosed, Duke may press it on remand. Pp. 581–582.

411 F. 3d 539, vacated and remanded.

SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, GINSBURG, BREYER, and ALITO, JJ., joined, and in which THOMAS, J., joined as to all but Part III–A. THOMAS, J., filed an opinion concurring in part, *post*, p. 582.

Sean H. Donahue argued the cause for petitioners. With him on the briefs were *David T. Goldberg*, *Jeffrey M. Gleason*, *J. Blanding Holman IV*, and *Caleb Jaffe*.

Deputy Solicitor General Hungar argued the cause for the United States as *amicus curiae* urging reversal. With him on the briefs were *Solicitor General Clement*, *Assistant Attorney General Wooldridge*, *James A. Feldman*, *Katherine J. Barton*, *Ann R. Klee*, *Chet M. Thompson*, *Granta Y. Nakayama*, *Thomas W. Swegle*, *Carol S. Holmes*, *David W. Schnare*, and *Alan Dion*.

Carter G. Phillips argued the cause for respondent. With him on the brief were *Mark D. Hopson*, *Kathryn B. Thomson*, *Stephen M. Nickelsburg*, *Henry V. Nickel*, *F. William Brownell*, *Makram Jaber*, *Marc E. Manly*, *Catherine S. Stempien*, *Garry S. Rice*, *T. Thomas Cottingham III*, and *Nash E. Long III*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of New Jersey et al. by *Zulima V. Farber*, former Attorney General of New Jersey, *Patrick DeAlmeida*, Assistant Attorney General, and *Kevin P. Auerbacher* and *Jung W. Kim*, Deputy Attorneys General, and by the Attorneys General and other officials for their respective jurisdictions as follows: *Terry Goddard*, Attorney General of Arizona, *Joseph P. Mikitish*, Assistant Attorney General, *Robert J. Spagnoletti*, former Attorney General of the District of Columbia, *Edward E. Schwab*, Deputy Solicitor General, and *Donna M. Murasky*, Senior Assistant Attorney General, *Gregory D. Stumbo*, Attorney General of Kentucky, *Douglas Scott Porter*, Assistant Attorney General, *Michael A. Cox*, Attorney General of Michigan, *Thomas L. Casey*, Solicitor General, and *Alan F. Hoffman* and *Neil D. Gordon*, Assistant Attorneys General, *Rob McKenna*, Attorney General of Washington, and *Leslie R. Seffern*, Assistant Attorney General; for the State

JUSTICE SOUTER delivered the opinion of the Court.

In the 1970s, Congress added two air pollution control schemes to the Clean Air Act: New Source Performance

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of New York et al. by *Eliot Spitzer*, former Attorney General of New York, *Caitlin J. Halligan*, Solicitor General, *Andrew Bing* and *Daniel J. Chepaitis*, Assistant Solicitors General, *Peter H. Lehner*, *Robert Rosenthal*, *J. Jared Snyder*, and *Michael J. Myers*, Assistant Attorneys General, by *Susan Shinkman* and *Robert A. Reiley*, and by the Attorneys General and former Attorneys General for their respective States as follows: *Bill Lockyer* of California, *Richard Blumenthal* of Connecticut, *Carl C. Danberg* of Delaware, *Lisa Madigan* of Illinois, *Thomas J. Miller* of Iowa, *G. Steven Rowe* of Maine, *J. Joseph Curran, Jr.*, of Maryland, *Thomas F. Reilly* of Massachusetts, *Mike Hatch* of Minnesota, *Kelly Ayotte* of New Hampshire, *Patricia A. Madrid* of New Mexico, *Hardy Myers* of Oregon, *Patrick Lynch* of Rhode Island, and *William H. Sorrell* of Vermont; for the American Lung Association et al. by *Hope M. Babcock;* for the Chesapeake Bay Foundation et al. by *Michael D. Goodstein* and *Julie Kaplan;* for Law Professors by *Jared A. Goldstein;* for the National Parks Conservation Association et al. by *George E. Hays* and *Michael A. Costa;* for STAPPA et al. by *Richard E. Ayres;* for Current and Former Members of Congress by *Stephanie Tai;* and for Former Administrator of the United States Environmental Protection Agency Carol M. Browner et al. by *Holly D. Gordon* and *Deborah A. Sivas.*

Briefs of *amici curiae* urging affirmance were filed for the State of Alabama et al. by *Troy King*, Attorney General of Alabama, *Kevin C. Newsom*, Solicitor General, and *Robert D. Tambling*, Assistant Attorney General, and by the Attorneys General and former Attorneys General for their respective States as follows: *David W. Márquez* of Alaska, *John W. Suthers* of Colorado, *Steve Carter* of Indiana, *Phill Kline* of Kansas, *Jon Bruning* of Nebraska, *Henry D. McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Robert F. McDonnell* of Virginia, and *Patrick J. Crank* of Wyoming; for APA Watch by *Lawrence J. Joseph;* for the American Public Power Association et al. by *Janet Pitterle Holt*, *Rae E. Cronmiller*, and *Richard H. Robinson;* for the Electric Utility Industry by *Steven G. McKinney*, *Michael D. Freeman*, and *P. Stephen Gidiere III;* for Law Professors by *David B. Rivkin, Jr.*, and *Lee A. Casey;* for the Manufacturers Association Work Group by *Charles H. Knauss*, *Robert V. Zener*, *Julie C. Becker*, *Richard S. Wasserstrom*, *Kevin B. Belford*, *M. Elizabeth Cox*, *Jan S. Amundson*, *Quentin Riegel*, *Robin S. Conrad*, and *Amar D. Sarwal;* for the National Environmental Development Association's Clean Air Project by *Leslie Sue Ritts* and *Lorane F. Hebert;* and

Standards (NSPS) and Prevention of Significant Deterioration (PSD), each of them covering modified, as well as new, stationary sources of air pollution. The NSPS provisions define the term "modification," 42 U. S. C. § 7411(a)(4), while the PSD provisions use that word "as defined in" NSPS, § 7479(2)(C). The Court of Appeals concluded that the statute requires the Environmental Protection Agency (EPA) to conform its PSD regulations on "modification" to their NSPS counterparts, and that EPA's 1980 PSD regulations can be given this conforming construction. We hold that the Court of Appeals's reading of the 1980 PSD regulations, intended to align them with NSPS, was inconsistent with their terms and effectively invalidated them; any such result must be shown to comport with the Act's restrictions on judicial review of EPA regulations for validity.

I

The Clean Air Amendments of 1970, 84 Stat. 1676, broadened federal authority to combat air pollution, see *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 845–846 (1984), and directed EPA to devise National Ambient Air Quality Standards (NAAQS) limiting various pollutants, which the States were obliged to implement and enforce, 42 U. S. C. §§ 7409, 7410. The amendments dealing with NSPS authorized EPA to require operators of stationary sources of air pollutants to use the best technology for limiting pollution, *Chevron*, *supra*, at 846; see also 1 F. Grad, Environmental Law § 2.03 [14], p. 2–356

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for the Washington Legal Foundation by *Daniel J. Popeo* and *Paul D. Kamenar*.

Briefs of *amici curiae* were filed for the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL–CIO, et al. by *Scott H. Segal* and *Jason B. Hutt*; for Walter C. Barber by *Robert L. Brubaker*; and for U. S. Representative Joe L. Barton by *George C. Landrith* and *Christopher C. Horner*.

(2006), both in newly constructed sources and those undergoing "modification," 42 U. S. C. § 7411(a)(2). Section 111(a) of the 1970 amendments defined this term within the NSPS scheme as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted," 42 U. S. C. § 7411(a)(4).

EPA's 1975 regulations implementing NSPS provided generally that "any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111." 40 CFR § 60.14(a) (1976). Especially significant here is the identification of an NSPS "modification" as a change that "increase[s] . . . the emission rate," which "shall be expressed as kg/hr of any pollutant discharged into the atmosphere." § 60.14(b).[1]

NSPS, however, did too little to "achiev[e] the ambitious goals of the 1970 Amendments," R. Belden, Clean Air Act 7 (2001) (hereinafter Belden), and the Clean Air Act Amendments of 1977, 91 Stat. 685, included the PSD provisions, which aimed at giving added protection to air quality in certain parts of the country "notwithstanding attainment and

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[1] EPA's 1975 NSPS regulations did not specify that the "rate" means the maximum rate possible for the technology, see 40 CFR §§ 60.14(a)–(b) (1977), but the parties all read the regulations this way. See Brief for Petitioners 2; Brief for United States 7; Brief for Respondent Duke 32. At another point in the NSPS regulations, a different definition of "modification" appeared: "'Modification' means any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility," § 60.2(h); see also *New York* v. *EPA*, 413 F. 3d 3, 11–12 (CADC 2005) *(per curiam)* ("[N]either the 1975 regulation nor its preamble explained why EPA found it necessary to offer these two separate glosses on 'modification'").

maintenance of" the NAAQS. 42 U. S. C. § 7470(1).[2] The 1977 amendments required a PSD permit before a "major emitting facility" could be "constructed" in an area covered by the scheme. § 7475(a). As originally enacted, PSD applied only to newly constructed sources, but soon a technical amendment added the following subparagraph: "The term 'construction' when used in connection with any source or facility, includes the modification (as defined in section 111(a)) of any source or facility." § 14(a)(54), 91 Stat. 1402, 42 U. S. C. § 7479(2)(C); see also *New York* v. *EPA*, 413 F. 3d 3, 13 (CADC 2005) *(per curiam)*. In other words, the "construction" requiring a PSD permit under the statute was made to include (though it was not limited to) a "modification" as defined in the statutory NSPS provisions.

In 1980, EPA issued PSD regulations,[3] which "limited the application of [PSD] review" of modified sources to instances of "'major' modificatio[n]," Belden 46, defined as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 CFR § 51.166(b)(2)(i) (1987). Further regulations in turn addressed various elements of this definition, three of which are to the point here. First, the regulations specified that an operational change consisting merely of "[a]n increase in the hours of operation or in the production rate" would not generally constitute a "physical change in or change in the method of operation." § 51.166(b)(2)(iii)(*f*). For purposes of a PSD permit, that is, such an operational

[2] Statutory PSD superseded a regulatory PSD scheme established by EPA in 1974. See 39 Fed. Reg. 42510. Under the regulations, the term "modification" was defined as "any physical change in, or change in the method of operation of, a stationary source which increases the emission rate of any pollutant for which a national standard has been promulgated." *Id.*, at 42514.

[3] Although EPA had promulgated an earlier set of PSD regulations in 1978, 43 Fed. Reg. 26380, none of the parties argues that they govern the conduct at issue in this case.

change would not amount to a "modification" as the Act defines it. Second, the PSD regulations defined a "net emissions increase" as "[a]ny increase in actual emissions from a particular physical change or change in the method of operation," net of other contemporaneous "increases and decreases in actual emissions at the source." §51.166(b)(3)(i). "Actual emissions" were defined to "equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation." §51.166(b)(21)(ii). "[A]ctual emissions" were to be "calculated using the unit's actual operating hours [and] production rates." *Ibid.* Third, the term "significant" was defined as "a rate of emissions that would equal or exceed" one or another enumerated threshold, each expressed in "tons per year." §51.166(b)(23)(i).

It would be bold to try to synthesize these statutory and regulatory provisions in a concise paragraph, but three points are relatively clear about the regime that covers this case:

> (a) The Act defines modification of a stationary source of a pollutant as a physical change to it, or a change in the method of its operation, that increases the amount of a pollutant discharged or emits a new one.
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> (b) EPA's NSPS regulations require a source to use the best available pollution-limiting technology only when a modification would increase the rate of discharge of pollutants measured in kilograms per hour.
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> (c) EPA's 1980 PSD regulations require a permit for a modification (with the same statutory definition) only when it is a major one and only when it would increase the actual annual emission of a pollutant above the actual average for the two prior years.

The Court of Appeals held that Congress's provision defining a PSD modification by reference to an NSPS modifica-

tion caught not only the statutory NSPS definition, but also whatever regulatory gloss EPA puts on that definition at any given time (for the purposes of the best technology requirement). When, therefore, EPA's PSD regulations specify the "change" that amounts to a "major modification" requiring a PSD permit, they must measure an increase in "the amount of any air pollutant emitted," 42 U. S. C. § 7411(a)(4), in terms of the hourly rate of discharge, just the way NSPS regulations do. Petitioners and the United States say, on the contrary, that when EPA addresses the object of the PSD scheme it is free to put a different regulatory interpretation on the common statutory core of "modification," by measuring increased emission not in terms of hourly rate but by the actual, annual discharge of a pollutant that will follow the modification, regardless of rate per hour. This disagreement is the nub of the case.

II

Respondent Duke Energy Corporation runs 30 coal-fired electric generating units at eight plants in North and South Carolina. *United States* v. *Duke Energy Corp.*, 411 F. 3d 539, 544 (CA4 2005). The units were placed in service between 1940 and 1975, and each includes a boiler containing thousands of steel tubes arranged in sets. *Ibid.* Between 1988 and 2000,[4] Duke replaced or redesigned 29 tube assemblies in order to extend the life of the units and allow them to run longer each day. *Ibid.*

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[4]The United States argues that some of Duke's projects were governed by EPA's PSD regulations promulgated in 1992 rather than the 1980 PSD regulations. Brief for United States 20, n. 4. Duke disputes this. Brief for Respondent Duke 14, n. 4. Because the United States acknowledges that the two sets of regulations "did not materially differ with respect to the legal question at issue here," Brief for United States 20, n. 4, we will assume, as did the Court of Appeals and the District Court, that the 1980 PSD regulations control. 411 F. 3d, at 543, n. 1; *United States* v. *Duke Energy Corp.*, 278 F. Supp. 2d 619, 629 (MDNC 2003).

The United States filed this action in 2000, claiming, among other things, that Duke violated the PSD provisions by doing this work without permits. Environmental Defense, North Carolina Sierra Club, and North Carolina Public Interest Research Group Citizen Lobby/Education Fund intervened as plaintiffs and filed a complaint charging similar violations.

Duke moved for summary judgment, one of its positions being that none of the projects was a "major modification" requiring a PSD permit because none increased hourly rates of emissions. The District Court agreed with Duke's reading of the 1980 PSD regulations. It reasoned that their express exclusion of "'[a]n increase in the hours of operation'" from the definition of a "'physical change or change in the method of operation'" implied that "post-project emissions levels must be calculated assuming" preproject hours of operation. 278 F. Supp. 2d 619, 640–641 (MDNC 2003). Consequently, the District Court said, a PSD "major modification" can occur "only if the project increases the hourly rate of emissions." *Id.*, at 641. The District Court found further support for its construction of the 1980 PSD regulations in one letter and one memorandum written in 1981 by EPA's Director of the Division of Stationary Source Enforcement, Edward E. Reich. *Id.*, at 641–642.

The United States and intervenor-plaintiffs (collectively, plaintiffs) subsequently stipulated "that they do not contend that the projects at issue in this case caused an increase in the maximum hourly rate of emissions at any of Duke Energy's units." App. 504. Rather, their claim "is based solely on their contention that the projects would have been projected to result in an increased utilization of the units at issue." *Ibid.* Duke, for its part, stipulated to plaintiffs' right to appeal the District Court's determination that projects resulting in greater operating hours are not "major modifications" triggering the PSD permit requirement, absent an increase in the hourly rate of emissions. The Dis-

trict Court then entered summary judgment for Duke on all PSD claims.

The Court of Appeals for the Fourth Circuit affirmed, "albeit for somewhat different reasons." 411 F. 3d, at 542. "[T]he language and various interpretations of the PSD regulations . . . are largely irrelevant to the proper analysis of this case," reasoned the Court of Appeals, "because Congress' decision to create identical statutory definitions of the term 'modification' " in the NSPS and PSD provisions of the Clean Air Act "has affirmatively mandated that this term be interpreted identically" in the regulations promulgated under those provisions. *Id.*, at 547, n. 3, 550. The Court of Appeals relied principally on the authority of *Rowan Cos.* v. *United States*, 452 U. S. 247, 250 (1981), where we held against the Government's differing interpretations of the word "wages" in different tax provisions. 411 F. 3d, at 550. As the Court of Appeals saw it, *Rowan* establishes an "effectively irrebuttable" presumption that PSD regulations must contain the same conditions for a "modification" as the NSPS regulations, including an increase in the hourly rate of emissions.[5] 411 F. 3d, at 550.

As the Court of Appeals said, Duke had not initially relied on *Rowan*, see 411 F. 3d, at 547, n. 4, and when the Court *sua sponte* requested supplemental briefing on *Rowan*'s relevance, plaintiffs injected a new issue into the case. They argued that a claim that the 1980 PSD regulation exceeded statutory authority would be an attack on the validity of the regulation that could not be raised in an enforcement proceeding. See 42 U. S. C. § 7607(b)(2). Under § 307(b) of the

[5] The Court of Appeals noted that EPA was free to abandon the requirement that a "modification" be accompanied by an increase in the hourly rate of emissions, provided it did so for both the NSPS and PSD programs. 411 F. 3d, at 550–551. In other words, the Court of Appeals raised no question about the reasonableness of the definition of "modification" in the 1980 PSD regulations, apart from its deviation from the definition contained in NSPS regulations.

Act, they said, judicial review for validity can be obtained only by a petition to the Court of Appeals for the District of Columbia Circuit, generally within 60 days of EPA's rulemaking. 42 U. S. C. § 7607(b).

The Court of Appeals rejected this argument. "Our choice of this interpretation of the PSD regulations . . . is not an invalidation of those regulations," it said, because "the PSD regulations can be interpreted" to require an increase in the hourly emissions rate as an element of a major "modification" triggering the permit requirement. 411 F. 3d, at 549, n. 7. To show that the 1980 PSD regulations are open to this construction, the Court of Appeals cited the conclusions of the District Court and the Reich opinions.

We granted the petition for certiorari brought by intervenor-plaintiffs, 547 U. S. 1127 (2006), and now vacate.

III

The Court of Appeals understood that it was simply construing EPA's 1980 PSD regulations in a permissible way that left them in harmony with their NSPS counterpart and, hence, the Act's single definition of "modification." The plaintiffs say that the Court of Appeals was rewriting the PSD regulations in a way neither required by the Act nor consistent with their own text.

It is true that no precise line runs between a purposeful but permissible reading of the regulation adopted to bring it into harmony with the Court of Appeals's view of the statute, and a determination that the regulation as written is invalid. But the latter occurred here, for the Court of Appeals's efforts to trim the PSD regulations to match their different NSPS counterparts can only be seen as an implicit declaration that the PSD regulations were invalid as written.

A

In applying the 1980 PSD regulations to Duke's conduct, the Court of Appeals thought that, by defining the term

"modification" identically in its NSPS and PSD provisions, the Act required EPA to conform its PSD interpretation of that definition to any such interpretation it reasonably adhered to under NSPS. But principles of statutory construction are not so rigid. Although we presume that the same term has the same meaning when it occurs here and there in a single statute, the Court of Appeals mischaracterized that presumption as "effectively irrebuttable." 411 F. 3d, at 550. We also understand that "[m]ost words have different shades of meaning and consequently may be variously construed, not only when they occur in different statutes, but when used more than once in the same statute or even in the same section." *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 433 (1932). Thus, the "natural presumption that identical words used in different parts of the same act are intended to have the same meaning . . . is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent." *Ibid.* A given term in the same statute may take on distinct characters from association with distinct statutory objects calling for different implementation strategies.

The point is the same even when the terms share a common statutory definition, if it is general enough, as we recognized in *Robinson* v. *Shell Oil Co.*, 519 U. S. 337 (1997). There the question was whether the term "employees" in § 704(a) of Title VII of the Civil Rights Act of 1964 covered former employees. Title VII expressly defined the term "employee," 42 U. S. C. § 2000e(f), but the definition was "consistent with either current or past employment," 519 U. S., at 342, and we held that "each section" of Title VII "must be analyzed to determine whether the context gives the term a further meaning that would resolve the issue in dispute," *id.*, at 343–344.

If *Robinson* were inconsistent with *Rowan* (on which the Court of Appeals relied), it would be significant that *Robinson* is the later case, but we read the two as compatible. In *Rowan*, the question was whether the value of meals and lodging given to employees by an employer for its own convenience should be counted in computing "wages" under the Federal Insurance Contributions Act (FICA), 26 U. S. C. §3101 *et seq.* (2000 ed. and Supp. IV), and the Federal Unemployment Tax Act (FUTA), 26 U. S. C. §3301 *et seq.* (2000 ed. and Supp. IV). Treasury Regulations made this value "includable in 'wages' as defined in FICA and FUTA, even though excludable from 'wages' under the substantially identical" statutory definition of "wages" for income-tax withholding purposes. 452 U. S., at 252. Although we ultimately held that the income-tax treatment was the proper one across the board, we did not see it this way simply because a "substantially identical" definition of "wages" appeared in each of the different statutory provisions. Instead, we relied on a manifest "congressional concern for the interest of simplicity and ease of administration." *Id.*, at 255 (internal quotation marks omitted). The FICA and FUTA regulations fell for failing to "serve that interest," *id.*, at 257, not for defying definitional identity.

In fact, in a setting much like *Rowan*, we recently declined to require uniformity when resolving ambiguities in identical statutory terms. In *United States* v. *Cleveland Indians Baseball Co.*, 532 U. S. 200 (2001), we rejected the notion that using the phrase "wages paid" in both "the discrete taxation and benefits eligibility contexts" can, standing alone, "compel symmetrical construction," *id.*, at 213; we gave "substantial judicial deference" to the "longstanding," "reasonable," and differing interpretations adopted by the Internal Revenue Service in its regulations and Revenue Rulings. *Id.*, at 218–220. There is, then, no "effectively irrebuttable" presumption that the same defined term in different provisions of the

same statute must "be interpreted identically." 411 F. 3d, at 550. Context counts.

It is true that the Clean Air Act did not merely repeat the term "modification" or the same definition of that word in its NSPS and PSD sections; the PSD language referred back to the section defining "modification" for NSPS purposes. 42 U. S. C. §7479(2)(C). But that did not matter in *Robinson*, and we do not see the distinction as making any difference here. Nothing in the text or the legislative history of the technical amendments that added the cross-reference to NSPS suggests that Congress had details of regulatory implementation in mind when it imposed PSD requirements on modified sources; the cross-reference alone is certainly no unambiguous congressional code for eliminating the customary agency discretion to resolve questions about a statutory definition by looking to the surroundings of the defined term, where it occurs. See *New York*, 413 F. 3d, at 19 ("So far as appears, . . . [this] incorporatio[n] by reference [is] the equivalent of Congress's having simply repeated in the [PSD] context the definitional language used before in the NSPS context"); cf. 91 Stat. 745 (expressly incorporating in an unrelated provision of the 1977 amendments "the interpretative regulation of the [EPA] Administrator . . . published in 41 Federal Register 55524–30" with specified exceptions); *New York*, *supra*, at 19 ("Congress's failure to use such an express incorporation of prior regulations for 'modification' cuts against" any suggestion that "Congress intended to incorporate" into the Act the "preexisting regulatory definition" of "modification"). Absent any iron rule to ignore the reasons for regulating PSD and NSPS "modifications" differently, EPA's construction need do no more than fall within the limits of what is reasonable, as set by the Act's common[6] definition.

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[6] Duke argues that the 1977 amendments intended to incorporate EPA's definition of "modification" under the 1974 regulatory PSD program. Brief for Respondent Duke 44; see also n. 2, *supra*. We find no support

B

The Court of Appeals's reasoning that the PSD regulations must conform to their NSPS counterparts led the court to read those PSD regulations in a way that seems to us too far a stretch for the language used. The 1980 PSD regulations on "modification" simply cannot be taken to track the Agency's regulatory definition under the NSPS.

True, the 1980 PSD regulations may be no seamless narrative, but they clearly do not define a "major modification" in terms of an increase in the "hourly emissions rate." On its face, the definition in the PSD regulations specifies no rate at all, hourly or annual, merely requiring a physical or operational change "that would result in a significant net emissions increase of any" regulated pollutant. 40 CFR §51.166(b)(2)(i). But even when a rate is mentioned, as in the regulatory definitions of the two terms, "significant" and "net emissions increase," the rate is annual, not hourly. Each of the thresholds that quantify "significant" is described in "tons per year," §51.166(b)(23)(i), and a "net emissions increase" is an "increase in actual emissions" measured against an "average" prior emissions rate of so many "tons

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for this argument in the statutory text, which refers to the statutory NSPS definition rather than the regulatory PSD definition. Although Duke correctly points out that "Congress instructed that the bulk of the pre-existing rules 'shall remain in effect,'" Brief for Respondent Duke 44 (quoting 42 U. S. C. §7478(a)), this instruction was a temporary measure "[u]ntil such time as an applicable implementation plan is in effect," §7478(a). We therefore do not read this language as a restriction on EPA's authority to interpret the statutory PSD provisions reasonably in a manner that departs from the 1974 regulations. Duke also invokes *Bragdon* v. *Abbott*, 524 U. S. 624, 631 (1998), for the proposition that "use of the pre-existing term 'modification' 'carries the implication that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations.'" Brief for Respondent Duke 44. But this reasoning is unavailing here, given the existence of at least three distinct regulatory definitions of "modification" at the time of the 1977 amendments. See *supra*, at 567–568, and nn. 1, 2.

per year," §§51.166(b)(3)(i) and (21)(ii). And what is further at odds with the idea that hourly rate is relevant is the mandate that "[a]ctual emissions shall be calculated using the unit's actual operating hours," §51.166(b)(21)(ii), since "actual emissions" must be measured in a manner that looks to the number of hours the unit is or probably will be actually running. What these provisions are getting at is a measure of actual operations averaged over time, and the regulatory language simply cannot be squared with a regime under which "hourly rate of emissions," 411 F. 3d, at 550 (emphasis deleted), is dispositive.

The reasons invoked by the Court of Appeals for its different view are no match for these textual differences. The appellate court cited two authorities ostensibly demonstrating that the 1980 PSD regulations "can be interpreted consistently" with the hourly emissions test, the first being the analysis of the District Court in this case. *Id.*, at 549, n. 7. The District Court thought that an increase in the hourly emissions rate was necessarily a prerequisite to a PSD "major modification" because a provision of the 1980 PSD regulations excluded an " 'increase in the hours of operation or in the production rate' " from the scope of " '[a] physical change or change in the method of operation.' " 278 F. Supp. 2d, at 640–641 (quoting 40 CFR §§51.166(b)(2)(iii)(*f*) and (3)(i)(*a*) (1987)). The District Court read this exclusion to require, in effect, that a source's hours of operation "be held constant" when preproject emissions are being compared with postproject emissions for the purpose of calculating the "net emissions increase." 278 F. Supp. 2d, at 640.

We think this understanding of the 1980 PSD regulations makes the mistake of overlooking the difference between the two separate components of the regulatory definition of "major modification": "[1] any physical change in or change in the method of operation of a major stationary source that [2] would result in a significant net emissions increase

of any pollutant subject to regulation under the Act." §51.166(b)(2)(i); cf. *New York*, 413 F. 3d, at 11 ("[The statutory] definition requires *both* a change—whether physical or operational—*and* a resulting increase in emissions of a pollutant" (emphasis in original)); *Wisconsin Elec. Power Co.* v. *Reilly*, 893 F. 2d 901, 907 (CA7 1990) (same). The exclusion of "increase in . . . hours . . . or . . . production rate," §51.166(b)(2)(iii)(*f*), speaks to the first of these components ("physical change . . . or change in . . . method," §51.166(b)(2)(i)), but not to the second ("significant net emissions increase," *ibid.*). As the preamble to the 1980 PSD regulations explains, forcing companies to obtain a PSD permit before they could simply adjust operating hours "would severely and unduly hamper the ability of any company to take advantage of favorable market conditions." 45 Fed. Reg. 52704. In other words, a mere increase in the hours of operation, standing alone, is not a "physical change or change in the method of operation." 40 CFR §51.166(b)(2)(iii).

But the District Court took this language a step further. It assumed that increases in operating hours (resulting in emissions increases at the old rate per hour) must be ignored even if caused or enabled by an independent "physical change . . . or change in the method of operation." §51.166(b)(2)(i). That reading, however, turns an exception to the first component of the definition into a mandate to ignore the very facts that would count under the second, which defines "net emissions increase" in terms of "actual emissions," §51.166(b)(3)(i), during "the unit's actual operating hours," §51.166(b)(21)(ii); see also 57 Fed. Reg. 32328 (1992) ("[A]n increase in emissions attributable to an increase in hours of operation or production rate which is the result of a construction-related activity is not excluded from [PSD] review . . . ").[7]

[7] Two Courts of Appeals agree. See *United States* v. *Cinergy Corp.*, 458 F. 3d 705, 708 (CA7 2006) ("[M]erely running the plant closer to its

The Court of Appeals invoked one other source of support, the suggestion in the Reich opinions that a physical or operational change increasing a source's hours of operation, without an increase in the hourly emissions rate, cannot be a PSD "major modification." Duke continues to rely on those opinions here, asserting that "there are no contrary Agency pronouncements." Brief for Respondent Duke 28. The Reich letters are not, however, heavy ammunition. Their persuasiveness is elusive, neither of them containing more than one brief and conclusory statement supporting Duke's position. Nor, it seems, are they unembarrassed by any "contrary Agency pronouncements." See, *e. g.*, App. 258 (Memorandum of Don R. Clay, Acting Assistant EPA Administrator for Air and Radiation (Sept. 9, 1988) (when "plans to increase production rate or hours of operation are inextricably intertwined with the physical changes planned," they are "precisely the type of change in hours or rate o[f] operation that would disturb a prior assessment of a source's environmental impact and should have to undergo PSD review scrutiny" (internal quotation marks and alterations omitted))); see also 57 Fed. Reg. 32328. In any event, it answers the citation of the Reich letters to realize that an isolated opinion of

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maximum capacity is not a major modification because it does not involve either a physical change or a change in the *method* of operation. If, however, a physical change enables the plant to increase its output, then, according to the EPA's interpretation, the exclusion for merely operating the plant for longer hours is inapplicable" (emphasis in original)); *Wisconsin Elec. Power Co.* v. *Reilly*, 893 F. 2d 901, 916, n. 11 (CA7 1990) (the regulatory exclusion for increases in the hours of operation "was provided to allow facilities to take advantage of fluctuating market conditions, not construction or modification activity"); *Puerto Rican Cement Co.* v. *EPA*, 889 F. 2d 292, 298 (CA1 1989) ("[T]here is no logical contradiction in rules that, on the one hand, permit firms using *existing* capacity simply to increase their output and, on the other, use the potential output of *new* capacity as a basis for calculating an increase in emissions levels" (emphasis in original)).

an agency official does not authorize a court to read a regulation inconsistently with its language.[8]

In sum, the text of the 1980 PSD regulations on "modification" doomed the Court of Appeals's attempt to equate those regulations with their NSPS counterpart. As a consequence, we have to see the Court of Appeals's construction of the 1980 PSD regulations as an implicit invalidation of those regulations, a form of judicial review implicating the provisions of §307(b) of the Act, which limit challenges to the validity of a regulation during enforcement proceedings when such review "could have been obtained" in the Court of Appeals for the District of Columbia Circuit within 60 days of EPA rulemaking. See 42 U. S. C. §7607(b); see also *United States* v. *Cinergy Corp.*, 458 F. 3d 705, 707–708 (CA7 2006); *Wisconsin Elec. Power Co.*, 893 F. 2d, at 914, n. 6. Because the Court of Appeals did not believe that its analysis reached validity, it did not consider the applicability or effect of that limitation here. We have no occasion at this point to consider the significance of §307(b) ourselves.

IV

Finally, Duke assumes for argument that the Act and the 1980 regulations may authorize EPA to construe a PSD "modification" as it has done, but it charges that the agency has taken inconsistent positions and is now "retroactively

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[8] Duke now offers an alternative argument for applying the hourly emissions test for the PSD program: before a project can become a "major modification" under the PSD regulations, 40 CFR §51.166(b)(2)(i) (1987), it must meet the definition of "modification" under the NSPS regulations, §60.14(a). That sounds right, but the language of the regulations does not support it. For example, it would be superfluous for PSD regulations to require a "major modification" to be a "physical change in or change in the method of operation," §51.166(b)(2)(i), if they presupposed that the NSPS definition of "modification," which contains the same prerequisite, §60.14(a), had already been satisfied. The NSPS and PSD regulations are complementary and not related as set to subset.

targeting twenty years of accepted practice." Brief for Respondent Duke 37; see also Brief for State of Alabama et al. as *Amici Curiae*. This claim, too, has not been tackled by the District Court or the Court of Appeals; to the extent it is not procedurally foreclosed, Duke may press it on remand.

* * * .

The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, concurring in part.

I join all but Part III–A of the Court's opinion. I write separately to note my disagreement with the dicta in that portion of the opinion, which states that the statutory cross-reference does not mandate a singular regulatory construction.

The Prevention of Significant Deterioration (PSD) statute explicitly links the definition of the term "modification" to that term's definition in the New Source Performance Standard (NSPS) statute:

> "The term 'construction' when used in connection with any source or facility, includes the modification (as defined in section 7411(a) of this title) of any source or facility." 42 U. S. C. § 7479(2)(C).

Section 7411(a) contains the NSPS definition of "modification," which the parties agree is the relevant statutory definition of the term for both PSD and NSPS. Because of the cross-reference, the definitions of "modification" in PSD and NSPS are one and the same. The term "modification" therefore has the same meaning despite contextual variations in the two admittedly different statutory schemes. Congress' explicit linkage of PSD's definition of "modification" to NSPS' prevents the Environmental Protection

Agency (EPA) from adopting differing regulatory definitions of "modification" for PSD and NSPS. Cf. *IBP, Inc.* v. *Alvarez*, 546 U. S. 21, 34 (2005) (concluding that an "explicit reference" to a previous statutory definition prohibits interpreting the same word differently).

Section 7479(2)(C)'s cross-reference carries more meaning than the mere repetition of the same word in a different statutory context. When Congress repeats the same word in a different statutory context, it is possible that Congress might have intended the context to alter the meaning of the word. See *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 433 (1932). No such possibility exists with § 7479(2)(C). By incorporating NSPS' definition of "modification," Congress demonstrated that it did not intend for PSD's definition of "modification" to hinge on contextual factors unique to the PSD statutory scheme. Thus, *United States* v. *Cleveland Indians Baseball Co.*, 532 U. S. 200 (2001), which analyzes the mere repetition of the same word in a different statutory context, carries little weight in this situation.

Likewise, this case differs from the circumstance we faced in *Robinson* v. *Shell Oil Co.*, 519 U. S. 337 (1997). In *Robinson*, we considered whether "employee," as used in § 704(a) of Title VII of the Civil Rights Act of 1964, included former employees. We determined that under the clear language of the statute, certain statutory provisions using the term "employee" made sense only with respect to former employees or current employees, but not both. *Id.*, at 342–343. Accordingly, upon analyzing the context of § 704(a), we were compelled to conclude that the term "employee" included former employees. This case does not present a similar situation. The statute here includes a statutory cross-reference, which conveys a clear congressional intent to provide a common definition for the term "modification." And the contextual differences between PSD and NSPS do not compel

different meanings for the term "modification." *Robinson* is, therefore, inapplicable.

Even if the cross-reference were merely the equivalent of repeating the words of the definition, we must still apply our usual presumption that the same words repeated in different parts of the same statute have the same meaning. See *Atlantic Cleaners*, *supra*, at 433; *ante*, at 574. That presumption has not been overcome here. While the broadly stated regulatory goals of PSD and NSPS differ, these contextual differences do not compel different definitions of "modification." That is, unlike in *Robinson*, reading the statutory definition in the separate contexts of PSD and NSPS does not require different interpretations of the term "modification." EPA demonstrated as much when it recently proposed regulations that would unify the regulatory definitions of "modification." See 70 Fed. Reg. 61083, n. 3 (2005) (terming the proposal "an appropriate exercise of our discretion" and stating that the unified definition better serves PSD's goals).

The majority opinion does little to overcome the presumption that the same words, when repeated, carry the same meaning. Instead, it explains that this Court's cases do not compel identical language to be interpreted identically in all situations. Granting that point, the majority still has the burden of stating why our general presumption does not control the outcome here. It has not done so.

Reporter's Note

The next page is purposely numbered 801. The numbers between 584 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 2, 2006, THROUGH APRIL 16, 2007

OCTOBER 2, 2006

Appeal Dismissed

No. 05–1447. CHRISTIAN CIVIC LEAGUE OF MAINE, INC. *v.* FEDERAL ELECTION COMMISSION ET AL. Appeal from D. C. D. C. dismissed as moot. Reported below: 433 F. Supp. 2d 81.

Certiorari Granted—Vacated and Remanded

No. 05–1051. BUSSELL *v.* MOTOROLA, INC., ET AL. C. A. 11th Cir. Reported below: 141 Fed. Appx. 819; and

No. 06–81. JAMES *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY NASHVILLE PUBLIC LIBRARY. C. A. 6th Cir. Reported below: 159 Fed. Appx. 686. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Burlington N. & S. F. R. Co.* v. *White*, 548 U. S. 53 (2006).

No. 05–1401. GONZALES, ATTORNEY GENERAL *v.* TCHOUKHROVA ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gonzales* v. *Thomas*, 547 U. S. 183 (2006) *(per curiam)*. Reported below: 404 F. 3d 1181.

No. 05–1435. TEXAS *v.* MASON. Ct. App. Tex., 5th Dist. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Davis* v. *Washington*, 547 U. S. 813 (2006). Reported below: 173 S. W. 3d 105.

No. 05–10347. CROSS *v.* KENTUCKY. Ct. App. Ky. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Davis* v. *Washington*, 547 U. S. 813 (2006).

Certiorari Dismissed

No. 05–10852. JONES *v.* SOUTH CAROLINA. Sup. Ct. S. C. Motion of petitioner for leave to proceed *in forma pauperis* de-

nied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 348 S. C. 13, 558 S. E. 2d 517.

No. 05–10924. IN SOO CHUN *v.* HOUSING AUTHORITY OF SEATTLE. Sup. Ct. Wash. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 05–10999. JONES *v.* SOUTH CAROLINA. Sup. Ct. S. C. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 05–11198. ANDREWS *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 05–11353. WILLIAMS *v.* NIX HOLTSFORD GILLILAND HIGGINS & HITSON, P. C. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 05–11372. ANDREWS *v.* MCINTYRE. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 162 Fed. Appx. 766.

No. 05–11572. KRONCKE *v.* ARIZONA ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 171 Fed. Appx. 544.

No. 06–5013. BARBER *v.* PETTIFORD, WARDEN. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 182 Fed. Appx. 252.

No. 06–5037. MURPHY *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–5057. ATAMIAN *v.* NGUYEN. Sup. Ct. Del. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 897 A. 2d 767.

No. 06–5195. COLIDA *v.* KYOCERA WIRELESS CO. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 179 Fed. Appx. 53.

No. 06–5651. GANT *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 180 Fed. Appx. 489.

No. 06–5673. WEBB *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–5817. JONES *v.* SALEEBY ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule

38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 06A12. HUBER-HAPPY *v.* HAPPY. C. A. 2d Cir. Application to recall and stay mandate, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. 06A100. SWEATMON *v.* WELLS FARGO BANK ET AL. C. A. 4th Cir. Application for injunctive relief, addressed to JUSTICE THOMAS and referred to the Court, denied. JUSTICE BREYER took no part in the consideration or decision of this application.

No. 06A101. SWEATMON *v.* WELLS FARGO BANK ET AL. C. A. 4th Cir. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied. JUSTICE BREYER took no part in the consideration or decision of this application.

No. 06A126. VAN STUYVESANT *v.* GONZALES, ATTORNEY GENERAL. C. A. 2d Cir. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. 06A127. GORDON *v.* SAVITT. Sup. Ct. Fla. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. 06A182. ANDREWS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Application for stay, addressed to JUSTICE ALITO and referred to the Court, denied.

No. D–2435. IN RE DISBARMENT OF KNICKMEIER. Disbarment entered. [For earlier order herein, see 548 U. S. 930.]

No. D–2436. IN RE DISBARMENT OF TRUONG. Disbarment entered. [For earlier order herein, see 548 U. S. 930.]

No. 05M92. WATERS *v.* MARYLAND MOTOR VEHICLE ADMINISTRATION;

No. 05M93. POLLACK *v.* VIRGINIA STATE BAR;

No. 05M94. RETANA *v.* TIG INSURANCE CO.;

No. 05M95. TELEPO *v.* WORKERS' COMPENSATION APPEAL BOARD OF PENNSYLVANIA (GPU);

No. 05M96. NASH *v.* HUMAN DEVELOPMENT SERVICES OF WESTCHESTER;

No. 05M97. DIXON *v.* UNITED STATES;

No. 05M98. MORRIS *v.* LOUISIANA ET AL.;

No. 06M1. HEMPHILL *v.* HARRISON, WARDEN;

No. 06M2. CRIVENS *v.* LEIGHTON ET AL.;

No. 06M3. TALLEY *v.* CITY OF ATLANTIC CITY, NEW JERSEY, ET AL.;

No. 06M4. CARRIGAN *v.* UNITED STATES;

No. 06M5. SOLOMON *v.* DEKALB COUNTY, GEORGIA, ET AL.;

No. 06M6. MBAKPUO *v.* COMMITTEE ON ADMISSIONS, DISTRICT OF COLUMBIA COURT OF APPEALS;

No. 06M7. NORTHWEST AIRLINES, INC. *v.* SPIRIT AIRLINES, INC.;

No. 06M8. LOGAN *v.* NEW YORK CITY POLICE DEPARTMENT ET AL.;

No. 06M9. LOGUE *v.* COAKLEY ET AL.;

No. 06M10. DEGLACE *v.* UNITED STATES;

No. 06M11. QUINTANA *v.* CHATMAN, WARDEN;

No. 06M13. COLE *v.* EVANS, WARDEN;

No. 06M14. CRAWFORD *v.* CHAO, SECRETARY OF LABOR;

No. 06M15. BOETTNER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL.;

No. 06M16. BAUERLE *v.* NCO FINANCIAL SYSTEMS, INC.;

No. 06M18. OCHOA *v.* UNITED STATES;

No. 06M19. MORGAN *v.* SAN JOAQUIN COMMUNITY HOSPITAL; and

No. 06M23. BLOOM *v.* ANDREWS, JUDGE, DISTRICT COURT OF KANSAS, SHAWNEE COUNTY, ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06M12. CALICDAN *v.* WAL-MART STORES, INC. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 06M17. DOE *v.* UNITED STATES;

No. 06M20. ROWE, ATTORNEY GENERAL OF MAINE *v.* NEW HAMPSHIRE MOTOR TRANSPORT ASSN. ET AL.;

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No. 06M21. COOPERATIVA DE SEGUROS DE VIDA DE PUERTO RICO *v.* F. A. C., INC., DBA FINANCIAL ADVISORS AND CONSULTANTS, INC., ET AL.; and

No. 06M22. DOE *v.* UNITED STATES. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 06M24. IN RE SEALED CASE. Motion for leave to file petition for writ of certiorari under seal granted.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and reimbursement of expenses granted, and the River Master is awarded a total of $6,262.49 for the period July 1, 2005, through June 30, 2006, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 546 U. S. 806.]

No. 136, Orig. BRZAK ET AL. *v.* UNITED NATIONS ET AL. Motion for leave to file bill of complaint denied.

No. 05–595. WHORTON, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS *v.* BOCKTING. C. A. 9th Cir. [Certiorari granted, 547 U. S. 1127.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–785. CAREY, WARDEN *v.* MUSLADIN. C. A. 9th Cir. [Certiorari granted, 547 U. S. 1069.] Motion of respondent for appointment of counsel granted. David W. Fermino, Esq., of San Francisco, Cal., is appointed to serve as counsel for respondent in this case.

No. 05–848. ENVIRONMENTAL DEFENSE ET AL. *v.* DUKE ENERGY CORP. ET AL. C. A. 4th Cir. [Certiorari granted, 547 U. S. 1127.] Motion of the Solicitor General for divided argument granted. Motion of Alabama et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 05–907. LOCKHEED MARTIN CORP. ET AL. *v.* MORGANTI ET AL., 547 U. S. 1175. Motion of respondent Lorraine Morganti for attorney's fees referred to the United States Court of Appeals for the Second Circuit for adjudication. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 05–1323. UGI UTILITIES, INC. *v.* CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. C. A. 2d Cir.;

No. 05–1448. BECK, LIQUIDATING TRUSTEE OF THE ESTATES OF CROWN VANTAGE, INC., ET AL. *v.* PACE INTERNATIONAL UNION ET AL. C. A. 9th Cir.;

No. 05–1645. WALLACE ET AL. *v.* CALOGERO, CHIEF JUSTICE, SUPREME COURT OF LOUISIANA, ET AL. C. A. 5th Cir.;

No. 06–11. LECLERC ET AL. *v.* WEBB ET AL. C. A. 5th Cir.; and

No. 06–134. PERMANENT MISSION OF INDIA TO THE UNITED NATIONS ET AL. *v.* CITY OF NEW YORK, NEW YORK. C. A. 2d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 05–1382. GONZALES, ATTORNEY GENERAL *v.* PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., ET AL. C. A. 9th Cir. [Certiorari granted, 547 U. S. 1205.] Motion of the Solicitor General for leave to file Volume 6 of the joint appendix under seal granted. Motion of Christian Medical and Dental Associations et al. for leave to file a brief as *amici curiae* out of time granted. Motion of Ronald W. Meyer for leave to file a brief as *amicus curiae* out of time denied.

No. 05–9222. BURTON *v.* WADDINGTON, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. [Certiorari granted, 547 U. S. 1178.] Motion of petitioner for appointment of counsel granted. Jeffrey L. Fisher, Esq., of Stanford, Cal., is appointed to serve as counsel for petitioner in this case.

No. 05–9435. MARIAN *v.* VENTURA COUNTY, CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [547 U. S. 1109] denied.

No. 05–10231. DELUCA *v.* KATCHMERIC. Sup. Ct. Va. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [547 U. S. 1191] denied.

No. 05–11257. MCRAE *v.* SMITH. C. A. 3d Cir.;

No. 05–11550. NWACHUKWU *v.* KARL. C. A. D. C. Cir.;

No. 05–11604. NWACHUKWU *v.* ROONEY ET AL. C. A. D. C. Cir.;

No. 05–11622. SWANSON *v.* UNITED STATES. C. A. 4th Cir.;

No. 05–11685. YOUNG *v.* 7-ELEVEN, INC. C. A. 5th Cir.; and

No. 06–5587. OLWOCH *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Motions of petitioners for leave to proceed *in*

forma pauperis denied. Petitioners are allowed until October 23, 2006, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 05–11407. IN RE PRESLEY;
No. 05–11475. IN RE CLARDY;
No. 05–11584. IN RE PATTERSON;
No. 05–11596. IN RE CRONAN;
No. 05–11627. IN RE DEAS;
No. 05–11709. IN RE SINGLETON;
No. 05–11762. IN RE MIDDLETON;
No. 05–11799. IN RE EILAND;
No. 05–11810. IN RE FREEMAN;
No. 06–5061. IN RE CRUTCHER;
No. 06–5073. IN RE BANKS;
No. 06–5245. IN RE ALLEN;
No. 06–5373. IN RE BURKS;
No. 06–5466. IN RE VARGAS;
No. 06–5568. IN RE BRAXTON;
No. 06–5703. IN RE CALLWOOD;
No. 06–5775. IN RE BORZYCH;
No. 06–5818. IN RE GREENUP;
No. 06–5847. IN RE RODRIGUEZ;
No. 06–5864. IN RE ALLEN;
No. 06–5985. IN RE KANZ;
No. 06–5999. IN RE ASHANTI;
No. 06–6183. IN RE ABREU ACEVES;
No. 06–6198. IN RE LEVERETTE;
No. 06–6204. IN RE DRABOVSKIY;
No. 06–6255. IN RE SPRY; and
No. 06–6275. IN RE BUMPASS. Petitions for writs of habeas corpus denied.

No. 06–5102. IN RE ERDMAN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 05–1445. IN RE COLLARD;
No. 05–1477. IN RE MCWILLIAMS;
No. 05–10807. IN RE O'CONNOR;
No. 05–11211. IN RE TAYLOR;
No. 05–11216. IN RE HOWARD;

No. 05–11231. IN RE KELLY;
No. 05–11419. IN RE BRAGGS;
No. 05–11667. IN RE ABUSAID;
No. 06–5003. IN RE WALKER;
No. 06–5139. IN RE BRYANT;
No. 06–5260. IN RE JONES;
No. 06–5374. IN RE BURKS;
No. 06–5504. IN RE WILLIAMS;
No. 06–5549. IN RE GLASS;
No. 06–5642. IN RE SEELY; and
No. 06–6026. IN RE WHITAKER. Petitions for writs of mandamus denied.

No. 05–1390. IN RE VAZQUEZ-VALENTIN;
No. 05–11294. IN RE WILLIAMS;
No. 05–11474. IN RE ARMSTRONG;
No. 05–11537. IN RE VAN STUYVESANT; and
No. 06–76. IN RE MCDONALD. Petitions for writs of mandamus and/or prohibition denied.

No. 06–5295. IN RE GREEN ET AL. Petition for writ of prohibition denied.

No. 05–11418. IN RE AL-HAKIM. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of prohibition dismissed. See this Court's Rule 39.8.

Certiorari Denied

No. 05–989. HENDRIX, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF FORSYTH COUNTY, GEORGIA, ET AL. *v.* BENNETT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 423 F. 3d 1247.

No. 05–1079. PIETRZAK *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–1148. C. D. OF NYC, INC., ET AL. *v.* UNITED STATES POSTAL SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 157 Fed. Appx. 428.

No. 05–1160. UTAH ET AL. *v.* SHIVWITS BAND OF PAIUTE INDIANS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 428 F. 3d 966.

No. 05–1183. ARAUJO *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 435 F. 3d 678.

No. 05–1251. HERNANDEZ-CASTILLO *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 436 F. 3d 516.

No. 05–1255. GUZMAN *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 259.

No. 05–1265. LJUCOVIC *v.* GONZALES, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 500.

No. 05–1271. CRESTMARK BANK ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 412 F. 3d 653.

No. 05–1279. MIDWEST GENERATION, EME, LLC *v.* LOCAL 15, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 429 F. 3d 651.

No. 05–1288. UNITED STATES EX REL. CORSELLO *v.* LINCARE, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 428 F. 3d 1008.

No. 05–1294. MCLANE WESTERN, INC. *v.* COLORADO DEPARTMENT OF REVENUE ET AL. Ct. App. Colo. Certiorari denied. Reported below: 126 P. 3d 211.

No. 05–1304. JONES *v.* DEPARTMENT OF LABOR ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 490.

No. 05–1305. MIZENKO *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 330 Mont. 299, 127 P. 3d 458.

No. 05–1307. BANCO PANAMERICANO, INC., ET AL. *v.* CHASTANG LANDFILL, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 430 F. 3d 884.

No. 05–1312. KELAVA *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 434 F. 3d 1120.

No. 05–1315. GROSSHANDELS-UND LAGEREI-BERUFSGENOSSENSCHAFT ET AL. *v.* WORLD TRADE CENTER

PROPERTIES, LLC, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 435 F. 3d 136.

No. 05–1318. RUGGERIO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 242.

No. 05–1326. HOLLIMAN *v.* CLARK ATLANTA UNIVERSITY, INC. C. A. 11th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 911.

No. 05–1335. LADDIN, TRUSTEE OF THE ETS CREDITORS' LITIGATION TRUST *v.* RELIANCE TRUST CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 437 F. 3d 1145.

No. 05–1350. MURRAY, INDIVIDUALLY AND AS GUARDIAN OF MURRAY, WARD *v.* CROSSMARK SALES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 339.

No. 05–1355. MATTHEWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 431 F. 3d 1296.

No. 05–1359. UNITED STATES EX REL. TOMLIN *v.* ROYCO, INC., DBA ESRD LABORATORY, ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–1360. DEPALMA *v.* NIKE, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 159 Fed. Appx. 1008.

No. 05–1361. EDUCATIONAL CREDIT MANAGEMENT CORP. *v.* REYNOLDS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 425 F. 3d 526.

No. 05–1365. LONG, BY AND THROUGH HIS MOTHER, GUARDIAN, AND CONSERVATOR, LONG *v.* TITAN INSURANCE CO. Ct. App. Mich. Certiorari denied.

No. 05–1366. SAN PAOLO U. S. HOLDING CO., INC. *v.* SIMON, DBA LIBERTY PAPER CO. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–1368. HAWTHORNE LAND CO. ET AL. *v.* OCCIDENTAL CHEMICAL CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 431 F. 3d 221.

No. 05–1370. NEVES DA ROCHA ET VIR *v.* ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES. Ct. App. Ark. Cer-

tiorari denied. Reported below: 93 Ark. App. 386, 219 S. W. 3d 660.

No. 05–1373. DABISH *v.* DAIMLERCHRYSLER CORP. ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–1376. SARVIS *v.* HATHAWAY. Sup. Jud. Ct. Me. Certiorari denied.

No. 05–1381. CONELY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–1385. OREGON, BY AND THROUGH ITS DEPARTMENT OF HUMAN SERVICES, ET AL. *v.* ASW, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR MSW ET AL., MINORS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 424 F. 3d 970.

No. 05–1387. WARCH *v.* OHIO CASUALTY INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 435 F. 3d 510.

No. 05–1388. CACCAMO *v.* CITY OF WESTLAND, MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–1391. SIBLEY *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 05–1394. CAREY *v.* OKUBO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 962.

No. 05–1399. HARDAGE *v.* CBS BROADCASTING INC. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 3d 1177.

No. 05–1403. GREEN *v.* PROVIDENCE MEDICAL CENTER ET AL. Ct. App. Mich. Certiorari denied.

No. 05–1405. HINOJOSA GONZALES *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 05–1406. DAVIS *v.* POLK COUNTY SHERIFF'S OFFICE. C. A. 11th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 598.

No. 05–1410. RODRIGUEZ *v.* PUERTO RICO FEDERAL AFFAIRS ADMINISTRATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 435 F. 3d 378.

No. 05–1411. MOORE *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 390 Md. 343, 889 A. 2d 325.

No. 05–1413. OKLAHOMA *v.* GRAVES. Ct. Crim. App. Okla. Certiorari denied.

No. 05–1414. BYRD *v.* FLENNIKEN ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–1415. WASHINGTON *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–1419. WAUGH *v.* HORTON. C. A. 8th Cir. Certiorari denied. Reported below: 431 F. 3d 602.

No. 05–1421. NORTHERN ILLINOIS CHAPTER OF ASSOCIATED BUILDERS AND CONTRACTORS, INC., ET AL. *v.* LAVIN, DIRECTOR, ILLINOIS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY. C. A. 7th Cir. Certiorari denied. Reported below: 431 F. 3d 1004.

No. 05–1422. DILLARD'S, INC. *v.* AZPB LIMITED PARTNERSHIP, DBA ARIZONA DIAMONDBACKS, ET AL. Ct. App. Ariz. Certiorari denied.

No. 05–1425. COOPER TIRE & RUBBER CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 760.

No. 05–1427. DETROIT NEWSPAPER AGENCY, DBA DETROIT NEWSPAPERS *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 171 Fed. Appx. 352.

No. 05–1428. SOUTH DAKOTA ET AL. *v.* DEPARTMENT OF THE INTERIOR ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 423 F. 3d 790.

No. 05–1430. BRACKNEY *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 05–1431. KATHREIN *v.* MCGRATH ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 858.

No. 05–1432. LOEZA-DOMINGUEZ *v.* GONZALES, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 428 F. 3d 1156.

No. 05–1436. BRAHMBHATT *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 622.

No. 05–1437. PALMA *v.* NEW YORK STATE WORKERS' COMPENSATION BOARD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 151 Fed. Appx. 20.

No. 05–1442. SARGENT, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF SARGENT *v.* CITY OF TOLEDO POLICE DEPARTMENT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 470.

No. 05–1443. MOTION SYSTEMS CORP. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 437 F. 3d 1356.

No. 05–1444. DESCARTES *v.* GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO ET AL. Sup. Ct. P. R. Certiorari denied.

No. 05–1446. SMITH *v.* AMERICAN ARBITRATION ASSN., INC. C. A. 5th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 109.

No. 05–1449. HUFFMAN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 266 Mich. App. 354, 702 N. W. 2d 621.

No. 05–1450. MOORE *v.* ACCENTURE, LLP, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 966.

No. 05–1454. ERIKSON ET AL. *v.* FARMERS GROUP, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 672.

No. 05–1455. PRUITT *v.* PRUITT. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 05–1456. MALMED *v.* POTTER, POSTMASTER GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 994.

No. 05–1458. WEBB *v.* LEVEL 3 COMMUNICATIONS, LLC. C. A. 10th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 725.

No. 05–1459. FRENCH ET AL. *v.* LIEBMANN. C. A. 4th Cir. Certiorari denied. Reported below: 440 F. 3d 145.

No. 05–1461. MARINE MECHANICAL CORP. *v.* EASTMAN. C. A. 6th Cir. Certiorari denied. Reported below: 438 F. 3d 544.

No. 05–1462. CITY OF SANTA CLARITA, CALIFORNIA *v.* LOS ANGELES COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 306.

No. 05–1464. DARK-EYES *v.* CONNECTICUT COMMISSIONER OF REVENUE SERVICES. Sup. Ct. Conn. Certiorari denied. Reported below: 276 Conn. 559, 887 A. 2d 848.

No. 05–1467. VEASAW *v.* DOMINGUEZ ET AL. C. A. 5th Cir. Certiorari denied.

No. 05–1468. WARRUM, PERSONAL REPRESENTATIVE OF THE ESTATE OF SAYYAH, DECEASED *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 427 F. 3d 1048.

No. 05–1469. STEPHEN *v.* HUCKABA, INDEPENDENT ADMINISTRATOR OF THE ESTATE OF POWERS, DECEASED. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 361 Ill. App. 3d 1047, 838 N. E. 2d 347.

No. 05–1470. BRUNER *v.* OKLAHOMA EX REL. OKLAHOMA TAX COMMISSION. Ct. Civ. App. Okla. Certiorari denied. Reported below: 130 P. 3d 767.

No. 05–1473. KNAPP *v.* CROSS. Ct. App. Ga. Certiorari denied.

No. 05–1474. POURGHOLAM *v.* ADVANCED TELEMARKETING CORP., DBA AEGIS COMMUNICATIONS GROUP, INC. C. A. 5th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 131.

No. 05–1478. GOSSAGE *v.* WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 830.

No. 05–1480. CITY OF PORTLAND, OREGON, ET AL. *v.* GATHRIGHT. C. A. 9th Cir. Certiorari denied. Reported below: 439 F. 3d 573.

No. 05–1481. SIDLEY AUSTIN LLP *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 437 F. 3d 695.

No. 05–1482. RENDALL *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 10th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 765.

No. 05–1485. MARESCA *v.* MANCALL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 135 Fed. Appx. 529.

No. 05–1488. NEILSON *v.* CITY OF CALIFORNIA CITY, CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 133 Cal. App. 4th 1296, 35 Cal. Rptr. 3d 453.

No. 05–1489. SYSTEMS DIVISION, INC. *v.* TEKNEK ELECTRONICS, LTD., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 168 Fed. Appx. 406.

No. 05–1490. SNOOK *v.* JAN V. POPIEL, INC. C. A. 5th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 577.

No. 05–1491. WECKEL *v.* DEMONTE. Ct. Sp. App. Md. Certiorari denied. Reported below: 164 Md. App. 734, 737.

No. 05–1492. CUSANO *v.* KLEIN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 998.

No. 05–1493. AT&T CORP., FKA SBC COMMUNICATIONS INC. *v.* RLH INDUSTRIES, INC. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied. Reported below: 133 Cal. App. 4th 1277, 35 Cal. Rptr. 3d 469.

No. 05–1494. SCHAFLER *v.* HSBC BANK USA, FKA MARINE MIDLAND BANK, ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 23 App. Div. 3d 1083, 803 N. Y. S. 2d 499 and 924.

No. 05–1496. KNUDSEN ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* LIBERTY MUTUAL INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 435 F. 3d 755.

No. 05–1498. POLICEMEN'S RELIEF AND PENSION FUND OF THE CITY OF PITTSBURGH *v.* ROSS. Commw. Ct. Pa. Certiorari denied. Reported below: 871 A. 2d 277.

No. 05–1499. JOHAL *v.* LITTLE LADY FOODS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 434 F. 3d 943.

No. 05–1500. Los Angeles County, California *v.* Northrop Grumman Corp. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 134 Cal. App. 4th 424, 36 Cal. Rptr. 3d 71.

No. 05–1502. Rx Depot, Inc., et al. *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 438 F. 3d 1052.

No. 05–1506. Carter *v.* Bowman et al. C. A. 11th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 915.

No. 05–1507. Overholt et vir *v.* Montville Township, Ohio, et al. C. A. 6th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 447.

No. 05–1509. White-Battle *v.* Democratic Party of Virginia et al. C. A. 4th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 447.

No. 05–1512. Constanza Alvarado *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 440 F. 3d 191.

No. 05–1513. Johnson *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 218 Ill. 2d 125, 842 N. E. 2d 714.

No. 05–1514. Blase Industries Corp., dba Wilson Solutions *v.* Anorad Corp. C. A. 5th Cir. Certiorari denied. Reported below: 442 F. 3d 235.

No. 05–1515. Barnett *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 05–1516. Blotteaux *v.* Qantas Airways Ltd. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 566.

No. 05–1517. Stern *v.* Trustees of Columbia University in the City of New York et al. C. A. Fed. Cir. Certiorari denied. Reported below: 434 F. 3d 1375.

No. 05–1518. Wasco Products, Inc. *v.* Southwall Technologies, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 434 F. 3d 989.

No. 05–1520. Tekse *v.* 3M Co., fka Minnesota Mining & Manufacturing Co. C. A. 8th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 431.

No. 05–1521. WILLIAMS *v.* POTTER, POSTMASTER GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 824.

No. 05–1522. LISANTI *v.* DIXON. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 147 S. W. 3d 638.

No. 05–1523. MARTIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–1526. IN RE GRAND JURY PROCEEDINGS. C. A. 11th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 72.

No. 05–1528. GEN LIN *v.* GONZALES, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 151 Fed. Appx. 104.

No. 05–1529. THURMAN *v.* BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 913 So. 2d 829.

No. 05–1530. TAHAMTAN *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 05–1531. YEE *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied.

No. 05–1532. ADELL *v.* JOHN RICHARDS HOMES BUILDING CO., L. L. C. C. A. 6th Cir. Certiorari denied. Reported below: 439 F. 3d 248.

No. 05–1533. GIFFORD BROTHERS SAND & GRAVEL, INC. *v.* ZONING BOARD OF APPEALS OF BARNSTABLE. App. Ct. Mass. Certiorari denied. Reported below: 56 Mass. App. 1105, 777 N. E. 2d 202.

No. 05–1534. HAGEGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 437 F. 3d 943.

No. 05–1535. HAMILTON ET AL. *v.* WASHINGTON STATE PLUMBING AND PIPEFITTING INDUSTRY PENSION PLAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 433 F. 3d 1091.

No. 05–1537. MOMAH *v.* MARYLAND STATE BOARD OF PHYSICIANS. Ct. Sp. App. Md. Certiorari denied.

No. 05–1538. KENDRICKS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–1540. BOND *v.* FRANCHISE TAX BOARD OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 822.

No. 05–1542. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 430 F. 3d 274.

No. 05–1545. ODEN *v.* NORTHERN MARIANAS COLLEGE. C. A. 9th Cir. Certiorari denied. Reported below: 440 F. 3d 1085.

No. 05–1546. STETLER ET AL. *v.* FIRST SOUTHERN NATIONAL BANK ET AL. Ct. App. Ky. Certiorari denied.

No. 05–1548. ARMSTRONG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 768.

No. 05–1549. RAGARD *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 439 F. 3d 1378.

No. 05–1550. FLYING J INC. *v.* KEETON. C. A. 6th Cir. Certiorari denied. Reported below: 429 F. 3d 259.

No. 05–1551. HEIDEMAN ET AL. *v.* SOUTH SALT LAKE CITY, UTAH. C. A. 10th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 627.

No. 05–1552. SCRIPSOLUTIONS *v.* EUFAULA DRUGS, INC. C. A. 11th Cir. Certiorari denied.

No. 05–1553. LEBEAUX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 496.

No. 05–1554. BOYNTON *v.* WESTERN WYOMING COMMUNITY COLLEGE. C. A. 10th Cir. Certiorari denied. Reported below: 157 Fed. Appx. 33.

No. 05–1555. MAHARAJ *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 432 F. 3d 1292.

No. 05–1556. LEWITTES *v.* LOBIS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 164 Fed. Appx. 97.

No. 05–1557. THARP, INDIVIDUALLY AND AS TRUSTEE FOR THARP, A PURPORTED SIMPLE TRUST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 12.

No. 05–1558. WHITAKER *v.* ALBERTSON'S CORP., INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 05–1559. SAUDI *v.* NORTHROP GRUMMAN CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 427 F. 3d 271.

No. 05–1560. PERKINS-AUGUSTE *v.* MONTEIRO. C. A. 3d Cir. Certiorari denied. Reported below: 436 F. 3d 397.

No. 05–1561. JACOBSEN *v.* HAYNES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 644.

No. 05–1562. REED *v.* MCI WORLDCOM NETWORK SERVICES INC. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 216.

No. 05–1563. SCHIFFAHRTSGESELLSCHAFT MS PRIWALL MBH & COMPANY KG ET AL. *v.* HILL ET UX. C. A. 3d Cir. Certiorari denied. Reported below: 435 F. 3d 404.

No. 05–1564. PAPPAS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 170 Fed. Appx. 130.

No. 05–1565. MERRILL *v.* BURKE E. PORTER MACHINERY CO. C. A. 6th Cir. Certiorari denied. Reported below: 159 Fed. Appx. 676.

No. 05–1566. SMITH ET VIR *v.* GENERAL MOTORS CORPORATION GENERAL MOTORS GLOBAL HEADQUARTERS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 661.

No. 05–1569. DEATLEY ET UX. *v.* BARNETT ET AL. Ct. App. Wash. Certiorari denied. Reported below: 127 Wash. App. 478, 112 P. 3d 540.

No. 05–1570. DANIAL *v.* DANIELS. C. A. 5th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 288.

No. 05–1571. MINISTRY OF FINANCE OF THE REPUBLIC OF INDONESIA *v.* KARAHA BODAS CO., L. L. C.; and

No. 05–1573. PT PERTAMINA (PERSORO), FKA PERUSAHAAN PERTAMBANGAN MINYAK, ET AL. *v.* KARAHA BODAS CO., L. L. C. C. A. 2d Cir. Certiorari denied.

No. 05–1574. ACOSTA *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 05–1576. STILLEY *v.* BELL, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 217.

No. 05–1577. STONE ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 432 F. 3d 651.

No. 05–1578. SORABELLA *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 277 Conn. 155, 891 A. 2d 897.

No. 05–1579. GOSSAGE *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 163 Fed. Appx. 909.

No. 05–1581. HOTTE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 174 Fed. Appx. 595.

No. 05–1582. GARCIA-GONZALEZ ET AL. *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 923.

No. 05–1583. IMPAX LABORATORIES, INC. *v.* ASTRAZENECA AB ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 171 Fed. Appx. 839.

No. 05–1584. HOUSING AUTHORITY OF JEFFERSON PARISH ET AL. *v.* JOHNSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 442 F. 3d 356.

No. 05–1585. PHELPS *v.* PATEL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 160.

No. 05–1586. REID *v.* ALENIA SPAZIO S. P. A. ET AL. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 130 S. W. 3d 201.

No. 05–1588. SAFEGUARD INTERNATIONAL FUND, L. P. *v.* IFC INTERCONSULT, AG. C. A. 3d Cir. Certiorari denied. Reported below: 438 F. 3d 298.

No. 05–1590. MOORES ET AL. *v.* FRIESE. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 134 Cal. App. 4th 693, 36 Cal. Rptr. 3d 558.

No. 05–1591. DEARTH *v.* COLLINS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 441 F. 3d 931.

No. 05–1592. DAVIS *v.* NOVY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 433 F. 3d 926.

No. 05–1594. MITZI INTERNATIONAL HANDBAG & ACCESSORIES, LTD. *v.* ROMAG FASTENERS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 168 Fed. Appx. 425.

No. 05–1595. WAFER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 521.

No. 05–1596. VELASQUEZ *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 909.

No. 05–1597. TUCKER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF TUCKER *v.* PHILADELPHIA DAILY NEWS ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 889 A. 2d 125.

No. 05–1599. SAENZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 664.

No. 05–1600. ALLEN *v.* ALLEN. C. A. 9th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 598.

No. 05–1601. GHARABAGUI ET AL. *v.* KARABAGUI. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–1602. GOPMAN *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 923 So. 2d 1164.

No. 05–1603. G. K. LTD. TRAVEL ET AL. *v.* CITY OF LAKE OSWEGO, OREGON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 436 F. 3d 1064.

No. 05–1604. SEAGRAVE *v.* DEAN ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 908 So. 2d 41.

No. 05–1606. ANR PIPELINE CO. ET AL. *v.* LOUISIANA TAX COMMISSION ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 923 So. 2d 81.

No. 05–1607. US BANK CORP., DBA US BANK *v.* KROSKE. C. A. 9th Cir. Certiorari denied. Reported below: 432 F. 3d 976.

No. 05–1608. ABBOTT ET AL. *v.* A-BEST PRODUCTS CO. ET AL. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 05–1609. ROSADO ET UX. *v.* WACKENHUT INTERNATIONAL, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 160 Fed. Appx. 5.

No. 05–1610. KIM *v.* WASHINGTON STATE DEPARTMENT OF LICENSING ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 774.

No. 05–1611. SAWYER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 441 F. 3d 890.

No. 05–1612. RUDD *v.* SHELBY COUNTY, TENNESSEE. C. A. 6th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 777.

No. 05–1613. COMBS-BURGE *v.* RUMSFELD, SECRETARY OF DEFENSE. C. A. 4th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 856.

No. 05–1615. REYNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 436 F. 3d 560.

No. 05–1616. NOTOPOULOS *v.* STATEWIDE GRIEVANCE COMMITTEE. Sup. Ct. Conn. Certiorari denied. Reported below: 277 Conn. 218, 890 A. 2d 509.

No. 05–1617. KERWICK *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 863.

No. 05–1619. KANSAS *v.* DAVIS. Sup. Ct. Kan. Certiorari denied. Reported below: 281 Kan. 169, 130 P. 3d 69.

No. 05–1620. WRIGHT *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 164 Fed. Appx. 973.

No. 05–1621. A. J., A MINOR CHILD, BY HIS FATHER JOSEPH, ET AL. *v.* SKOJEC ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 283.

No. 05–1622. NEWELL *v.* MASSACHUSETTS DEPARTMENT OF MENTAL RETARDATION. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 446 Mass. 286, 843 N. E. 2d 1084.

No. 05–1624. B. BRAUN MEDICAL, INC. *v.* ROGERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 500.

No. 05–1625. SIBLEY *v.* WILSON, JUDGE, CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, MIAMI-DADE COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 05–1626. ABDULLAH *v.* BOARD OF GOVERNORS OF UNIVERSITY OF NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 990.

No. 05–1627. WILLIAMS *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 157 Fed. Appx. 737.

No. 05–1628. KEYES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 64.

No. 05–1633. ELY *v.* SHEAHAN, SHERIFF, COOK COUNTY, ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 361 Ill. App. 3d 605, 838 N. E. 2d 26.

No. 05–1635. REDFEARN ET UX. *v.* UNITED STATES TRUSTEE ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–1636. ARMSTRONG *v.* HOWELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 424.

No. 05–1637. ADAMS *v.* CITY OF SUFFOLK, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 827.

No. 05–1638. CORZINE, GOVERNOR OF NEW JERSEY, ET AL. *v.* AMERICAN TRUCKING ASSNS., INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 437 F. 3d 313.

No. 05–1640. HOLCOMBE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 187 S. W. 3d 496.

No. 05–1641. FREEMAN *v.* BERGE, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 441 F. 3d 543.

No. 05–1642. HAMILTON ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 440 F. 3d 693.

No. 05–1643. HAMMER, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED *v.* CITY OF EUGENE, OREGON. Ct. App. Ore. Certiorari denied. Reported below: 202 Ore. App. 189, 121 P. 3d 693.

No. 05–1644. WILLIAMS *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–1646. MIDLEN *v.* BAR COUNSEL OF THE DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 885 A. 2d 1280.

No. 05–1647. BARRISH *v.* OFFICE OF DISCIPLINARY COUNSEL. Sup. Ct. Pa. Certiorari denied. Reported below: 586 Pa. 657, 896 A. 2d 1162.

No. 05–1648. SPIEGEL *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied.

No. 05–1649. STRAFFORD ET AL., INDIVIDUALLY AND AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF STRAFFORD-LUNEKE, DECEASED *v.* AGENCY FOR HEALTH CARE ADMINISTRATION. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 915 So. 2d 643.

No. 05–1650. RIOS ET UX., INDIVIDUALLY AND AS NEXT FRIENDS OF THEIR MINOR CHILDREN RIOS ET AL. *v.* CITY OF DEL RIO, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 444 F. 3d 417.

No. 05–1651. ORZECHOWSKI *v.* YORK INTERNATIONAL CORP. C. A. 6th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 298.

No. 05–1652. PULLIAM *v.* OHIO CASUALTY INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 494.

No. 05–1653. WILSON ET AL. *v.* AIRTHERM PRODUCTS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 436 F. 3d 906.

No. 05–1654. MAIDEN *v.* NORTH AMERICAN STAINLESS, LIMITED PARTNERSHIP, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 485.

No. 05–1655. KMART CORP. *v.* STEARNS COUNTY, MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 710 N. W. 2d 761.

No. 05–1658. EMCARE, INC., ET AL. *v.* BELT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 444 F. 3d 403.

No. 05–1659. CAMACHO ET AL. *v.* TEXAS WORKFORCE COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 445 F. 3d 407.

No. 05–1660. COUNTY VANLINES, INC. *v.* EXPERIAN INFORMATION SOLUTIONS, INC., AKA EXPERIAN. C. A. 2d Cir. Certiorari denied.

No. 05–1661. VELTEN *v.* BANK ONE, N. A., AS TRUSTEE. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 917 So. 2d 454.

No. 05–1662. ROYAL CARIBBEAN CRUISES, LTD. *v.* MACK ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 361 Ill. App. 3d 856, 838 N. E. 2d 80.

No. 05–1664. U. S. BANK NATIONAL ASSN. *v.* UNITED AIR LINES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 438 F. 3d 720.

No. 05–1665. VANDERVEEN ET UX. *v.* CITY OF ARROYO GRANDE, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–1666. PENNY *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 05–1667. GOLDSMITH *v.* SWAN REEFER A. S. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 983.

No. 05–1668. BALLY *v.* BANK ONE, N. A. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1245, — N. E. 2d —.

No. 05–1669. KOURKOUNAKIS *v.* RUSSO. C. A. 2d Cir. Certiorari denied. Reported below: 167 Fed. Appx. 255.

No. 05–1671. CANAS ET AL. *v.* AL-JABI ET AL. Sup. Ct. Ga. Certiorari denied.

No. 05–9164. RAMSEY *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 359 Ill. App. 3d 1211, 904 N. E. 2d 1247.

No. 05–9476. LITTLEJOHN *v.* MOODY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 688.

No. 05–9564. GRAY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 37 Cal. 4th 168, 118 P. 3d 496.

No. 05–9709. SIMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–9716. CHAVEZ-ALONSO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 431 F. 3d 726.

No. 05–9739. WILLIAMS *v.* DEPARTMENT OF LABOR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 157 Fed. Appx. 564.

No. 05–9859. ADAMSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–9919. CLEARY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 144 Fed. Appx. 204.

No. 05–10017. CHAVEZ-RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 19.

No. 05–10018. DAVENPORT *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 177 S. W. 3d 763.

No. 05–10121. DAVIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 347 Ill. App. 3d 1106, 867 N. E. 2d 118.

No. 05–10154. GARVER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 674.

No. 05–10204. GARCIA-RICO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 572.

No. 05–10208. HERRERA-BARAJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 675.

No. 05–10220. ADAMS *v.* HOLLAND, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 17.

No. 05–10261. PENEAUX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 432 F. 3d 882.

No. 05–10283. BLACK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–10322. DOWELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 430 F. 3d 1100.

No. 05–10325. CORNELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 404.

No. 05–10389. SUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 897.

No. 05–10470. WEBSTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 3d 308.

No. 05–10479. MATTHEWS *v.* WILLIAMS ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–10525. CANTU-MARICHALAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 331.

No. 05–10543. MASTERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 435 F. 3d 56.

No. 05–10570. MCKAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 431 F. 3d 1085.

No. 05–10577. HADLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 431 F. 3d 484.

No. 05–10593. MERTZ *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 218 Ill. 2d 1, 842 N. E. 2d 618.

No. 05–10600. PITTS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 498.

No. 05–10601. SMITH *v.* MICHIGAN. Cir. Ct. Van Buren County, Mich. Certiorari denied.

No. 05–10604. ANDERSON *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 183 S. W. 3d 335.

No. 05–10613. PIPPIN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS

DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 434 F. 3d 782.

No. 05–10617. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 440 F. 3d 832.

No. 05–10626. WADE *v.* SIMON. C. A. 5th Cir. Certiorari denied.

No. 05–10629. SELLERS *v.* ALLEN COUNTY CHILD SUPPORT DIVISION ET AL. C. A. 7th Cir. Certiorari denied.

No. 05–10630. SERRANO *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–10635. HOLLANDER *v.* FLASH DANCERS TOPLESS CLUB ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 15.

No. 05–10636. GIRON-SORIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 591.

No. 05–10646. BORUSHASKI *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–10647. SHOWALTER *v.* BRAXTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 590.

No. 05–10648. KING *v.* NIELSEN. C. A. 9th Cir. Certiorari denied.

No. 05–10652. HARRIS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–10658. VELEZ *v.* MODERN LINENS & TOWELS ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 21 App. Div. 3d 1239, 801 N. Y. S. 2d 842.

No. 05–10661. DUGAR *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–10662. DUNLAP *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–10663. DAVIS *v.* GEORGIA. Super. Ct. Monroe County, Ga. Certiorari denied.

No. 05–10669. CRUZ-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 525.

No. 05–10677. JAYA *v.* GONZALES, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied. Reported below: 169 Fed. Appx. 596.

No. 05–10680. WINTERS *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 620.

No. 05–10682. BROWN *v.* MAUNA KEA AGRIBUSINESS CO., INC. Int. Ct. App. Haw. Certiorari denied. Reported below: 108 Haw. 471, 121 P. 3d 936.

No. 05–10683. WILLSON *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–10685. CRANE *v.* POTEAT. Ct. App. Ga. Certiorari denied. Reported below: 275 Ga. App. 669, 621 S. E. 2d 501.

No. 05–10691. MORALES-CHAVEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 540.

No. 05–10697. JONES *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 219 Ill. 2d 1, 845 N. E. 2d 598.

No. 05–10700. JOINER *v.* FULTON COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 891.

No. 05–10702. NUNN *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–10703. LOW *v.* HOUSE, JUDGE, CIRCUIT COURT OF MISSOURI, ST. CHARLES COUNTY, ET AL. Sup. Ct. Mo. Certiorari denied.

No. 05–10707. SIVAK *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied.

No. 05–10711. RILEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 280 Ga. 267, 626 S. E. 2d 116.

No. 05–10719. BISSELL *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 05–10723. ARCHIE *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–10729. WILLIAMS *v.* HINSLEY ET AL. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 05–10730. WILCOX *v.* BOWEN. C. A. 6th Cir. Certiorari denied.

No. 05–10731. WILCOX *v.* BURTON. C. A. 6th Cir. Certiorari denied.

No. 05–10736. STEPHENSON *v.* NEW YORK. County Ct., Chemung County, N. Y. Certiorari denied.

No. 05–10738. DELUCA *v.* KATCHMERIC (two judgments). Sup. Ct. Va. Certiorari denied.

No. 05–10740. MIZE *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–10746. WILLIAMS *v.* DONALD, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–10747. WALTON *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–10748. WARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 477.

No. 05–10749. RAISER *v.* UNIVERSITY OF LA VERNE. C. A. 9th Cir. Certiorari denied.

No. 05–10754. MOHAMMAD *v.* MORIARTY, JUDGE, CIRCUIT COURT OF MISSOURI, CITY OF ST. LOUIS. Sup. Ct. Mo. Certiorari denied.

No. 05–10757. COHEN *v.* SPENCER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied.

No. 05–10759. EARLE *v.* DOVE ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–10763. GILBERT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 430 F. 3d 215.

No. 05–10764. JOHNSON *v.* LUOMA, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 425 F. 3d 318.

No. 05–10765. MAY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 584 Pa. 640, 887 A. 2d 750.

No. 05–10773. TYSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–10774. AKHTAR *v.* STACK ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–10777. GOINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 437 F. 3d 644.

No. 05–10782. CAUDILL *v.* HOLT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–10789. MOORE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 05–10796. JACKSON *v.* CARROLL, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 161 Fed. Appx. 190.

No. 05–10798. DAVIS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 05–10799. DOMINGUEZ *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–10800. ELJACK *v.* AL'S DELI & GRILL. C. A. 11th Cir. Certiorari denied.

No. 05–10803. SMALLS *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 159 Fed. Appx. 1006.

No. 05–10812. BROWN *v.* POWELL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 329.

No. 05–10813. YOUNG *v.* BOSTON UNIVERSITY. App. Ct. Mass. Certiorari denied. Reported below: 64 Mass. App. 586, 834 N. E. 2d 760.

No. 05–10818. DODDS *v.* MOORE, SUPERINTENDENT, NORTHEAST CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 05–10822. FITZGERALD *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 877 A. 2d 1273.

No. 05–10824. SIMS *v.* AYERS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 425 F. 3d 560.

No. 05–10825. KEEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 958.

No. 05–10826. TILLEY *v.* CHERTOFF, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 536.

No. 05–10828. NANCE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 915 So. 2d 1200.

No. 05–10831. LEWIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 05–10832. COLEMAN *v.* MARTIN ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–10838. ALEXANDER *v.* NEW JERSEY STATE PAROLE BOARD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 160 Fed. Appx. 249.

No. 05–10846. DELUCA *v.* KATCHMERIC (two judgments). Sup. Ct. Va. Certiorari denied.

No. 05–10847. MORRISON *v.* CAIN, WARDEN; and
No. 05–10848. MORRISON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–10849. MILLER *v.* DONALD, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–10850. REDD *v.* CONWAY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 858.

No. 05–10856. PITERA *v.* MINTZ, ASSISTANT DISTRICT ATTORNEY, KINGS COUNTY, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 733.

No. 05–10857. ALEXANDER *v.* ADDISON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 780.

No. 05–10858. MAGGITT *v.* HAMLET ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 614.

No. 05–10865. BARNES *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–10869. CHAMPION *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–10872. CENSKE *v.* MARQUETTE GENERAL HOSPITAL ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–10873. COCHRAN *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–10879. BARTLETT *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 901.

No. 05–10880. BRADLEY *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 05–10882. TOWNSEND *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 973.

No. 05–10883. WOODS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–10884. WHITE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 128 Wash. App. 1005.

No. 05–10885. KNIGHT *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–10886. PERRY *v.* UNITED PARCEL SERVICE, INC. C. A. 6th Cir. Certiorari denied.

No. 05–10890. FLONNORY *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 893 A. 2d 507.

No. 05–10891. FORD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–10893. CENSKE *v.* MICHIGAN DEPARTMENT OF COMMUNITY HEALTH ET AL. Ct. App. Mich. Certiorari denied.

No. 05–10896. COCKRELL *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 05–10897. DRAKE *v.* REED ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–10899. MENDOZA GARCIA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–10900. HILTON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 919 So. 2d 520.

No. 05–10902. FOSTER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 05–10905. GRIFFIN *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 355 Ill. App. 3d 1206, 885 N. E. 2d 588.

No. 05–10910. ROUSAN *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 436 F. 3d 951.

No. 05–10911. KOEHL *v.* GREENE, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 21 App. Div. 3d 1237, 801 N. Y. S. 2d 165.

No. 05–10916. SALAS *v.* TILLMAN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 918.

No. 05–10917. BARNETT *v.* AYERS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 380.

No. 05–10919. GRANRUTH *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–10923. CUMMINGS *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 188.

No. 05–10925. COLE *v.* CARUSO ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–10926. CHASE *v.* CULP, CLERK, COURT OF APPEALS OF TEXAS, SEVENTH DISTRICT; and CHASE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–10927. DIXON *v.* CITY OF MARION, INDIANA, ET AL. Sup. Ct. Ind. Certiorari denied.

No. 05–10929. AGUSTIN *v.* ALAMEDA COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 05–10932. ROZENBLAT *v.* SANDIA CORP. ET AL. C. A. Fed. Cir. Certiorari denied.

No. 05–10936. ERVIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–10937. KALFOUNTZOS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 05–10938. COLEMAN *v.* PATAKI, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 170 Fed. Appx. 145.

No. 05–10940. MAYO *v.* ROBERTS, WARDEN. Super. Ct. Calhoun County, Ga. Certiorari denied.

No. 05–10945. LYNCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 437 F. 3d 902.

No. 05–10946. KNOX *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 05–10949. SNELGROVE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 921 So. 2d 560.

No. 05–10950. RYLE *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 842 N. E. 2d 320.

No. 05–10954. NWANDU *v.* VAUGHN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–10955. MILLHOUSE *v.* INTERNAL REVENUE SERVICE. C. A. D. C. Cir. Certiorari denied. Reported below: 180 Fed. Appx. 180.

No. 05–10964. RAYMER *v.* SAMUELS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–10966. ROYSTER *v.* NEW YORK. Ct. App. N. Y. Certiorari denied.

No. 05–10967. SOLAR *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 05–10968. STEPHENSON *v.* NEW YORK ELECTRIC & GAS ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 19 App. Div. 3d 823, 797 N. Y. S. 2d 163.

No. 05–10970. BELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 88.

No. 05–10974. BOWEN *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 601.

No. 05–10975. BLACKWELL *v.* HARRISON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–10977. SEAMAN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–10978. ANDERSON *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 753.

No. 05–10980. WASHINGTON *v.* MISSISSIPPI EMPLOYMENT SECURITY COMMISSION. Ct. App. Miss. Certiorari denied. Reported below: 921 So. 2d 390.

No. 05–10981. TOLIVER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–10982. USHER *v.* MORTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 789.

No. 05–10983. WISEMAN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 626.

No. 05–10986. MILLER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 431 F. 3d 241.

No. 05–10988. REDDITT *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 491.

No. 05–10990. TARAZON *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–10992. DOWLING *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 584 Pa. 396, 883 A. 2d 570.

No. 05–10993. DOUGLAS *v.* COURT OF APPEALS OF TEXAS, FIRST DISTRICT. Sup. Ct. Tex. Certiorari denied.

No. 05–10994. CENSKE *v.* MICHIGAN STATE POLICE ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–10995. JOHNSON *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 05–10996. LYTCH *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 05–10997. LANDRITH *v.* KANSAS DISCIPLINE ADMINISTRATOR. Sup. Ct. Kan. Certiorari denied. Reported below: 280 Kan. 619, 124 P. 3d 467.

No. 05–11005. ALVAREZ ACUNA *v.* LOCAL 408 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 549.

No. 05–11006. ALVAREZ ACUNA *v.* MEL CLAYTON FORD, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 551.

No. 05–11007. VENG YOU TANG *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 166.

No. 05–11009. BURRELL *v.* KAPTURE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 85.

No. 05–11010. BLANKS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11012. PETRUCCELLI *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied. Reported below: 174 S. W. 3d 761.

No. 05–11014. WALLACE *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11015. THOMPSON *v.* HAMRICK ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–11020. KNOX *v.* SCOVILLE ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–11022. JOHNSON *v.* UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 207.

No. 05–11025. MENDEZ *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11026. PHINISSEE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 05–11028. ALAMEEN *v.* NEBRASKA. Ct. App. Neb. Certiorari denied.

No. 05–11029. BRONAUGH *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 05–11030. BANDY-BEY, AKA BANDY *v.* CARLSON, WARDEN, ET AL. Ct. App. Minn. Certiorari denied.

No. 05–11032. GREENE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 345.

No. 05–11034. GRAHAM *v.* GREER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–11036. HAWTHORNE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–11041. HALL *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 914 So. 2d 957.

No. 05–11043. JORDAN *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–11048. MONTGOMERY *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 34 Kan. App. 2d 511, 120 P. 3d 1151.

No. 05–11052. BOOKER *v.* INTERNATIONAL RIVERCENTER, DBA NEW ORLEANS HILTON RIVERSIDE & TOWERS. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 905 So. 2d 498.

No. 05–11062. FORREST *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 183 S. W. 3d 218.

No. 05–11069. JOHNSON *v.* WHORTON, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 596.

No. 05–11071. KLEINSCHMIDT *v.* UNIVERSITY OF MIAMI HOSPITAL ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 924 So. 2d 808.

No. 05–11074. SUMMERS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 431 F. 3d 861.

No. 05–11075. GRIFFIN *v.* SUTHERS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 66.

No. 05–11077. FEAGIN *v.* SILIPOS. C. A. 2d Cir. Certiorari denied.

No. 05–11080. AVILES *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 277 Conn. 281, 891 A. 2d 935.

No. 05–11081. BAKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 438 F. 3d 749.

No. 05–11082. BAKER *v.* REXROAD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 159 Fed. Appx. 61.

No. 05–11083. BUTCHER *v.* CRAIG ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 252.

No. 05–11084. JACKSON *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 678.

No. 05–11085. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–11086. VAHIDALLAH *v.* PROFESSIONAL EXAMINATION SERVICE ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–11087. WILCOX *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11092. HARRIS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–11093. DOE *v.* COMMUNITY HEALTH PLAN ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 23 App. Div. 3d 778, 803 N. Y. S. 2d 322.

No. 05–11094. DERRICKSON *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 177 Fed. Appx. 247.

No. 05–11097. LEON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 265.

No. 05–11098. ENGEL *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 153 Fed. Appx. 111.

No. 05–11099. LAPRATH *v.* BRILL. Sup. Ct. S. D. Certiorari denied. Reported below: 712 N. W. 2d 32.

No. 05–11100. CHARLTON *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 439 F. 3d 369.

No. 05–11103. MARTIN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 05–11107. CARDENAS *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 177.

No. 05–11109. RICE *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 184 S. W. 3d 646.

No. 05–11113. SCOTT *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 937 So. 2d 1065.

No. 05–11114. SANTOS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–11119. JAROCH *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11122. VIGIL *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 127 P. 3d 916.

No. 05–11124. MICHAU *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 05–11129. KNOX *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 201 Ore. App. 733, 122 P. 3d 143.

No. 05–11131. BRANDON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–11132. BIROTTE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–11133. BUSH *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 922 So. 2d 802.

No. 05–11134. SEAGRAVES *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 05–11135. SOTO *v.* KIMSEL ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–11136. POSEY *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 185 S. W. 3d 170.

No. 05–11137. SMITH *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 689.

No. 05–11139. MONARREZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 05–11140. LAPE, AKA ANDERSON *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 157 Fed. Appx. 491.

No. 05–11146. THOMAS *v.* BROWN, SHERIFF, DEKALB COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–11147. ZARYCHTA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11148. WETMORE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 05–11150. WATFORD *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 361 Ill. App. 3d 1103, 911 N. E. 2d 12.

No. 05–11151. WHITNEY *v.* MOTOR CARGO. C. A. 9th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 240.

No. 05–11152. WALKER *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 05–11154. MARTIN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 05–11155. LARSON *v.* SCHUETZLE, WARDEN, ET AL. Sup. Ct. N. D. Certiorari denied.

No. 05–11157. RHOADES *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied.

No. 05–11159. EARLY *v.* KENTUCKY. C. A. 6th Cir. Certiorari denied.

No. 05–11161. SCHWARTZ *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–11163. TISIUS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 183 S. W. 3d 207.

No. 05–11165. BESS *v.* PRAXAIR, INC. C. A. 2d Cir. Certiorari denied. Reported below: 139 Fed. Appx. 369.

No. 05–11166. BROWN *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 607.

No. 05–11168. EPPS *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11170. OCASIO *v.* CITY OF NEW YORK SUPPORT COLLECTION UNIT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 167 Fed. Appx. 269.

No. 05–11173. WILLIAMS *v.* UPTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–11174. WALLACE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–11175. WALLACE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–11176. DEJESUS ESTACIO *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 340 Ore. 106, 129 P. 3d 184.

No. 05–11177. WALKER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–11179. SIMS *v.* PATRICK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE. C. A. 3d Cir. Certiorari denied.

No. 05–11180. SMOLSKY *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Pa. Certiorari denied. Reported below: 585 Pa. 545, 889 A. 2d 500.

No. 05–11182. SMYLIE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11184. REHBERGER *v.* DISTRICT OF COLUMBIA BOARD ON PROFESSIONAL RESPONSIBILITY. Ct. App. D. C. Certiorari denied. Reported below: 891 A. 2d 249.

No. 05–11185. STANFORD *v.* SMITH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–11186. SMITH *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 24 App. Div. 3d 1286, 805 N. Y. S. 2d 903.

No. 05–11190. MAAS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 05–11196. SOWELL *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11197. MARTINEZ *v.* ST. DOMINIC'S HOME ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 22 App. Div. 3d 493, 803 N. Y. S. 2d 657.

No. 05–11200. LINDENSMITH *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–11201. MILES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 336.

No. 05–11205. DYER *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied.

No. 05–11207. ANDERSON *v.* CIRCUIT COURT OF MARYLAND, WASHINGTON COUNTY. Ct. Sp. App. Md. Certiorari denied.

No. 05–11209. BACHMAN *v.* KUHN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 245.

No. 05–11212. WINNINGHAM *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–11213. WILDE *v.* ESTATE OF DENISON ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 330 Mont. 400, 126 P. 3d 506.

No. 05–11218. LYTLE *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 595.

No. 05–11220. NEWTON *v.* WHORTON, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 853.

No. 05–11221. JONES *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 05–11222. REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 361.

No. 05–11232. ERICKSON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 05–11235. DUCKETT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 918 So. 2d 224.

No. 05–11242. PEAY *v.* KETCHEM ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–11246. JAMES, AKA BLOXSON *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 790.

No. 05–11247. JOHNSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 889 A. 2d 113.

No. 05–11249. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 442 F. 3d 258.

No. 05–11250. PRESSLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 261.

No. 05–11251. BAKER *v.* DITTO. Sup. Ct. Okla. Certiorari denied.

No. 05–11252. SELLERS *v.* BURT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 132.

No. 05–11258. AYOUB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 159 Fed. Appx. 94.

No. 05–11259. BROOKS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–11260. DRAKE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–11261. DORITY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–11262. BELK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 435 F. 3d 817.

No. 05–11264. CLARK *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 05–11265. ASHMAN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–11266. ERNST *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 710 N. W. 2d 678.

No. 05–11267. DOMINECK *v.* CRITTENDEN ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–11268. ANDERSON *v.* GEORGIA BOARD OF PARDONS AND PAROLES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 726.

No. 05–11270. SMITH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–11271. BEARD *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 824.

No. 05–11275. HALL *v.* SMITH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 105.

No. 05–11276. HOLGUIN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 05–11277. HERNANDEZ-MACIAS, AKA HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 350.

No. 05–11278. GOODWIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 506.

No. 05–11279. HARDING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 910.

No. 05–11280. GREGG *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 900 So. 2d 758.

No. 05–11281. LOUIS *v.* NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 437 F. 3d 697.

No. 05–11282. JENNINGS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–11283. CARLISLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–11285. AVILES-JAIMES *v.* UNITED STATES (Reported below: 172 Fed. Appx. 38); CASTOR-LOZANO *v.* UNITED STATES (169 Fed. Appx. 877); CONTRERAS-TERRAZAS *v.* UNITED STATES (172 Fed. Appx. 49); GONZALEZ-TREJO *v.* UNITED STATES (169 Fed. Appx. 858); MARRUFO-GUTIERREZ *v.* UNITED STATES (172 Fed. Appx. 44); and ROBLES-VERTIZ *v.* UNITED STATES (442 F. 3d 350). C. A. 5th Cir. Certiorari denied.

No. 05–11286. CHMIEL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 585 Pa. 547, 889 A. 2d 501.

No. 05–11288. LOPEZ *v.* JETER. C. A. 5th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 894.

No. 05–11289. BROUSSARD *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 05–11290. COOK *v.* STEWART ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 367.

No. 05–11291. WILLIAMS *v.* ROBINSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 772.

No. 05–11292. TORRES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–11295. PIERRE *v.* SMITH, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 05–11296. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–11298. BALLARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–11299. DORISE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 305.

No. 05–11300. WOODY *v.* THOMPSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–11301. GUTIERREZ BRUNO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11302. GUTIERREZ BRUNO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11303. SAWYER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–11305. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–11306. SALAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 795.

No. 05–11307. SANDIFUR *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 692.

No. 05–11309. ODUOK *v.* PHILLIPS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 878.

No. 05–11312. GALLE *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 904 So. 2d 773.

No. 05–11313. HARRISON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 175 Fed. Appx. 386.

No. 05–11314. HUNT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 171.

No. 05–11315. FLORES-VELASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 650.

No. 05–11316. HUSSER *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11318. PAYNE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 642.

No. 05–11319. HERNANDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 772.

No. 05–11320. FRENCH *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 611.

No. 05–11322. NIPPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 174.

No. 05–11324. KALASHO *v.* CITY OF EASTPOINTE, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–11326. JARVIS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 922 So. 2d 198.

No. 05–11328. McGee *v.* Superior Court of California, Sacramento County, et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–11329. Paredes-Chavez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 852.

No. 05–11330. Deberry et al. *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 430 F. 3d 1294.

No. 05–11332. Blanco-Loya *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 856.

No. 05–11333. Spears *v.* Betsy Johnson Health Care Systems, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 516.

No. 05–11334. Zornes *v.* Jones, Director, Oklahoma Department of Corrections. C. A. 10th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 786.

No. 05–11335. Thomas *v.* Federal Congress Member Enforcement of Prison Litigation Reform Act et al. C. A. 9th Cir. Certiorari denied.

No. 05–11337. Hubenka *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 438 F. 3d 1026.

No. 05–11339. Hills *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 924 So. 2d 995.

No. 05–11340. Gray *v.* Richmond Public Schools. C. A. 4th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 185.

No. 05–11341. McConico *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–11342. Rice *v.* Ohio. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 05–11343. Sanders *v.* Ohio. Ct. App. Ohio, Summit County. Certiorari denied.

No. 05–11344. McCree *v.* Marshall, Individually and in His Official Capacity as Sheriff, et al. C. A. 11th Cir. Certiorari denied.

No. 05–11345. METTERS *v.* RANSDELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 833.

No. 05–11346. MCQUEEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 445 F. 3d 757.

No. 05–11347. MCKNIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 448 F. 3d 237.

No. 05–11348. SANCHEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–11349. RINGO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 134 Cal. App. 4th 870, 36 Cal. Rptr. 3d 444.

No. 05–11351. MARTINEZ PEREZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 76.

No. 05–11352. ORTIZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–11354. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 7.

No. 05–11355. RAVEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–11357. LOTT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 433 F. 3d 718.

No. 05–11358. MASON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 262.

No. 05–11359. MAXWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 442.

No. 05–11360. MASON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 510.

No. 05–11361. GALLARDO-DE ANDA, AKA LOPEZ, AKA GALLARDO, AKA MENDOZA-LOPEZ, AKA PADILLA *v.* UNITED STATES (Reported below: 169 Fed. Appx. 337); MEZA-ROBLEDO, AKA HERNANDEZ-RODRIGUEZ *v.* UNITED STATES (169 Fed. Appx. 304);

and MENDOZA-TOVAR *v.* UNITED STATES (168 Fed. Appx. 660). C. A. 5th Cir. Certiorari denied.

No. 05–11362. FLORES-SERRANO *v.* UNITED STATES (Reported below: 169 Fed. Appx. 297); GAINER *v.* UNITED STATES (169 Fed. Appx. 841); and GONZALEZ *v.* UNITED STATES (169 Fed. Appx. 346). C. A. 5th Cir. Certiorari denied.

No. 05–11364. OTT *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11365. MISIAK *v.* KIMBERLY. Ct. App. Wash. Certiorari denied. Reported below: 128 Wash. App. 1056.

No. 05–11366. COOPER *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 05–11367. CHALLENOR *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 05–11368. BLACK *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 05–11369. SCHMIDT *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 05–11370. SILER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 168 Fed. Appx. 423.

No. 05–11371. BOLLING *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 05–11374. BARTHOLOMEW *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 127 Wash. App. 1006.

No. 05–11375. ALLEN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 05–11377. BLYTHER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 175 N. C. App. 226, 623 S. E. 2d 43.

No. 05–11378. MORRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 429 F. 3d 65.

No. 05–11379. NEAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 542.

No. 05–11381. ELLIOT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 37 Cal. 4th 453, 122 P. 3d 968.

No. 05–11382. CREEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 627.

No. 05–11383. DEL RIO, AKA TORRES, AKA RAMO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 923.

No. 05–11384. CONWAY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 108 Ohio St. 3d 214, 842 N. E. 2d 996.

No. 05–11385. ROBERSON *v.* UNITED STATES (three judgments). C. A. 8th Cir. Certiorari denied.

No. 05–11386. RICHARDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–11387. LINDELL *v.* HOUSER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 422 F. 3d 1033.

No. 05–11388. SUGGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–11389. MCGUIRE *v.* KANE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 583.

No. 05–11390. PRADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 917.

No. 05–11391. LAMAR *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 813.

No. 05–11392. LAWSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–11393. SMITH *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 170 Fed. Appx. 141.

No. 05–11394. BIROS *v.* BAGLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 3d 379.

No. 05–11396. ADKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 961.

No. 05–11398. WALLER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–11399. WARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–11400. WILLIAMS *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 05–11401. VAN STUYVESANT *v.* DIME BANK CORP. ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–11402. YONAI *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–11403. WINSTON *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1250, — N. E. 2d —.

No. 05–11404. TAYLOR *v.* CHAO, SECRETARY OF LABOR. C. A. 4th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 826.

No. 05–11405. VENKATESAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 295 App. Div. 2d 635, 743 N. Y. S. 2d 615.

No. 05–11406. SI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–11408. ORTIZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–11410. ARTHUR *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–11412. SIMS *v.* PATRICK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–11413. SMITH *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–11414. LOPEZ-LARA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–11415. DIAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 434 F. 3d 1270.

No. 05–11416. BABER *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 842 N. E. 2d 343.

No. 05–11417. BINGHAM *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11420. VARGAS-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 902.

No. 05–11421. MITCHELL *v.* OKLAHOMA ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 131 P. 3d 116.

No. 05–11423. KHAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 877.

No. 05–11424. LOUD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 314.

No. 05–11425. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 440 F. 3d 927.

No. 05–11426. MATKIN *v.* HENRY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 602.

No. 05–11427. DUKE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 360 N. C. 110, 623 S. E. 2d 11.

No. 05–11428. DONIKIN-EL, AKA DONIKIN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 153.

No. 05–11429. DURHAM *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 446 Mass. 212, 843 N. E. 2d 1035.

No. 05–11430. ESTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 441.

No. 05–11431. REINHART *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 442 F. 3d 857.

No. 05–11432. SELF *v.* CRUM. C. A. 10th Cir. Certiorari denied. Reported below: 439 F. 3d 1227.

No. 05–11433. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–11434. SHAW *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–11435. SAID *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 05–11436. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 446 F. 3d 870.

No. 05–11437. ADKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 961.

No. 05–11438. BONNER *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 425 F. 3d 1145.

No. 05–11439. BATES *v.* WALLACE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–11441. DOLENZ *v.* CORPUS CHRISTI INTERNATIONAL SCHOOL OF SAILING, INC., ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 05–11442. EDMONDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–11443. VILLARREAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–11444. TRIGGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 184.

No. 05–11445. CALTON *v.* CITY OF GARLAND, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 338.

No. 05–11446. DAVIS *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 914 So. 2d 200.

No. 05–11447. DOWNS *v.* HUBBERT. C. A. 9th Cir. Certiorari denied.

No. 05–11448. SOKOLSKY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–11449. ADDERLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 292.

No. 05–11450. BRIGGS *v.* CITY OF ASHEVILLE POLICE DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 516.

No. 05–11451. PINEDA *v.* BRIDGETT. Sup. Ct. Cal. Certiorari denied.

No. 05–11452. PEREZ *v.* SCRIBNER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11453. YOUNG *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 05–11454. WILSON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 05–11455. CARTER *v.* LUEBBERS, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 05–11456. MOATS *v.* COOKE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–11457. PINEDA *v.* GIBSON. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–11458. OCASIO *v.* NEEDHAM, JUDGE, SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 55.

No. 05–11459. OCHOA ESTRADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 899.

No. 05–11460. PAJARDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 476.

No. 05–11461. SIDWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 440 F. 3d 865.

No. 05–11462. SCOTT *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 921 So. 2d 904.

No. 05–11463. MADAN *v.* CHAO, SECRETARY OF LABOR. C. A. D. C. Cir. Certiorari denied.

No. 05–11464. LOGREIRA *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 902.

No. 05–11465. KETCHUP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–11466. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–11468. LOPEZ MOYA *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 741.

No. 05–11469. PATTERSON *v.* ALLSTATE INSURANCE CO. Sup. Ct. Kan. Certiorari denied.

No. 05–11470. COULTER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 365 Ark. 262, 227 S. W. 3d 904.

No. 05–11471. BERRY *v.* GRIGAS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 188.

No. 05–11472. BYRD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 169 Fed. Appx. 662.

No. 05–11473. BEEMAN *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 767.

No. 05–11476. CASTRO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 175 Fed. Appx. 469.

No. 05–11477. AREVALO CHAVEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–11478. COLEMAN *v.* UNGER, SUPERINTENDENT, ORLEANS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–11479. DESAMOURS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–11480. TOLBERT *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11481. WILLIAMS *v.* CALIFORNIA; and
No. 05–11702. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–11482. TRUEBLOOD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–11483. TORRES-VILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 893.

No. 05–11484. VILLANUEVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 633.

No. 05–11485. ROBERTS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–11486. LOWE *v.* UNITED STATES ATTORNEY'S OFFICE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 05–11487. GARCIA-AVALINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 444 F. 3d 444.

No. 05–11488. FOSTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11489. FLOYD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 98.

No. 05–11490. FLORES *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied. Reported below: 170 S. W. 3d 722.

No. 05–11491. HERNANDEZ-DE LA TORRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 890.

No. 05–11492. GIBSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 181 Fed. Appx. 6.

No. 05–11494. HAYDON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 187 S. W. 3d 300.

No. 05–11495. GROSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 478.

No. 05–11496. GONGORA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–11497. GARCIA DEL FIERRO, AKA GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 896.

No. 05–11498. FLORES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 722.

No. 05–11499. CULKIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 675.

No. 05–11500. GARCIA ESPITIA *v.* KANE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11501. PAYNE *v.* WEST VIRGINIA. Cir. Ct. Harrison County, W. Va. Certiorari denied.

No. 05–11502. HOA DUY DINH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–11505. ADAMS *v.* BLEDSOE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 483.

No. 05–11506. BUTLER *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–11507. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 206.

No. 05–11508. BLANKS *v.* SCRIBNER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 566.

No. 05–11509. WILLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 433 F. 3d 634.

No. 05–11510. VEREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 810.

No. 05–11511. WESLEY *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 475.

No. 05–11512. VILLALONGO *v.* VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 334.

No. 05–11513. NESBITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 603.

No. 05–11514. SWAIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 181 S. W. 3d 359.

No. 05–11515. BREWER *v.* SCHUMACHER ET AL. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 05–11516. BERGMAN *v.* LACOUTURE. Sup. Ct. Colo. Certiorari denied.

No. 05–11517. ALLEN *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 4th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 335.

No. 05–11518. GROSS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 926 So. 2d 1282.

No. 05–11519. HOLLINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 855.

No. 05–11520. HENDRICKSON *v.* WATTERS. C. A. 7th Cir. Certiorari denied.

No. 05–11521. GONZALEZ-LAUZAN, AKA GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 437 F. 3d 1128.

No. 05–11523. HEMLER, AKA RICH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 897.

No. 05–11524. DANTZLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 996.

No. 05–11525. CAMPBELL *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 05–11526. DAILY *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 918 So. 2d 294.

No. 05–11529. RAMIREZ-ARROYO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 839.

No. 05–11530. DeLeon Salinas *v.* United States (Reported below: 177 Fed. Appx. 398); Del Bosque *v.* United States (170 Fed. Appx. 888); Camacho *v.* United States (169 Fed. Appx. 375); Sanchez *v.* United States (176 Fed. Appx. 513); Molina *v.* United States (174 Fed. Appx. 812); Toro-Munoz *v.* United States (176 Fed. Appx. 517); and Martinez *v.* United States (178 Fed. Appx. 404). C. A. 5th Cir. Certiorari denied.

No. 05–11531. Rogers *v.* Tennessee. Sup. Ct. Tenn. Certiorari denied. Reported below: 188 S. W. 3d 593.

No. 05–11532. Olea Ramirez *v.* Clark. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 767.

No. 05–11533. Cortez *v.* Illinois. Sup. Ct. Ill. Certiorari denied.

No. 05–11534. Diaz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 884.

No. 05–11535. Smith *v.* Hall, Warden. C. A. 9th Cir. Certiorari denied.

No. 05–11536. Walton *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 05–11538. Washington *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 435 F. 3d 860.

No. 05–11539. Taylor *v.* New Mexico. Ct. App. N. M. Certiorari denied.

No. 05–11540. Perea *v.* Arizona. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 05–11541. Mulero *v.* Connecticut. App. Ct. Conn. Certiorari denied. Reported below: 91 Conn. App. 509, 881 A. 2d 1039.

No. 05–11542. Saunders *v.* Edwards, Superintendent, Otisville Correctional Facility, et al. C. A. 2d Cir. Certiorari denied. Reported below: 171 Fed. Appx. 872.

No. 05–11543. Reynolds *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 05–11544. CUEVAS REVELES *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 729.

No. 05–11545. STERN *v.* UNIVERSITY OF MASSACHUSETTS AT AMHERST ET AL. C. A. 1st Cir. Certiorari denied.

No. 05–11546. BAILEY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 925 So. 2d 318.

No. 05–11547. BATES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11548. BELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 88.

No. 05–11549. BARNETT *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 05–11551. RATHBONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 533.

No. 05–11553. SHOYINKA *v.* CITY OF SANTA MONICA, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–11554. JABLONSKI *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 37 Cal. 4th 774, 126 P. 3d 938.

No. 05–11555. MAJID ET AL. *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 3d 112.

No. 05–11556. POWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 176 Fed. Appx. 267.

No. 05–11557. FRATILA *v.* BOUDLOCHE, TRUSTEE. C. A. 5th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 594.

No. 05–11559. SCHJANG *v.* BUDGE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11560. PENA-CARRILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 29.

No. 05–11562. PADRON-BALDERAS *v.* UNITED STATES (Reported below: 171 Fed. Appx. 452); PIMENTEL-HILLAN, AKA

PIMENTAL-HILLAN, AKA PIMENTAL-VALENCIA *v.* UNITED STATES (171 Fed. Appx. 459); GAMEZ-ORTIZ *v.* UNITED STATES (176 Fed. Appx. 515); MARTINEZ-CASARES *v.* UNITED STATES (180 Fed. Appx. 506); DELGADO-GUERRERO *v.* UNITED STATES (177 Fed. Appx. 395); ESTRADA-RAMIREZ *v.* UNITED STATES (176 Fed. Appx. 470); RODRIGUEZ-LOPEZ, AKA PEREZ *v.* UNITED STATES (176 Fed. Appx. 510); BENITEZ-DELGADO *v.* UNITED STATES (175 Fed. Appx. 684); and GONZALEZ-VELA *v.* UNITED STATES (177 Fed. Appx. 393). C. A. 5th Cir. Certiorari denied.

No. 05–11563. KNAUSS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 170 Fed. Appx. 772.

No. 05–11564. SUBICA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 59.

No. 05–11565. ROMERO-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–11566. REYES CANNADY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 321.

No. 05–11567. DAWSON *v.* NEVADA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 145.

No. 05–11568. BOYKIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–11570. CHRISTY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 285.

No. 05–11571. CHAUDHRY *v.* FORD MOTOR CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 157 Fed. Appx. 927.

No. 05–11573. KROMAH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 889 A. 2d 114.

No. 05–11574. LOPEZ *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11575. LARUMBE-ZUNIGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 651.

No. 05–11576. REINHARDT *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 05–11577. KIM ET AL. *v.* KIA MOTORS AMERICA. Ct. App. Mich. Certiorari denied.

No. 05–11578. KAMASINSKI *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 929 So. 2d 1053.

No. 05–11579. SOLIMAN *v.* JOHANNS, SECRETARY OF AGRICULTURE. C. A. 8th Cir. Certiorari denied. Reported below: 412 F. 3d 920.

No. 05–11580. BATTS ET AL. *v.* UNITED STATES;
No. 05–11600. LANGSTON *v.* UNITED STATES;
No. 06–6015. BROWN *v.* UNITED STATES; and
No. 06–6033. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 977.

No. 05–11581. KUMAR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 361.

No. 05–11583. PATKINS *v.* CALIFORNIA (three judgments). Sup. Ct. Cal. Certiorari denied.

No. 05–11585. DELAROSA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 174 Fed. Appx. 588.

No. 05–11586. DUARTE-JUAREZ *v.* UNITED STATES (Reported below: 441 F. 3d 336); RODRIGUEZ-ORELLANA *v.* UNITED STATES (170 Fed. Appx. 905); RAMIREZ-AGUILAR *v.* UNITED STATES (171 Fed. Appx. 449); VILLELA-ESPINOSA *v.* UNITED STATES (170 Fed. Appx. 903); MORALES-CERNA, AKA MORELAS-SERNA *v.* UNITED STATES (184 Fed. Appx. 374); RUBIO-CRUZ *v.* UNITED STATES (169 Fed. Appx. 256); MONGE-ANAYA, AKA ARTIAGA-ANAYA *v.* UNITED STATES (176 Fed. Appx. 619); GONZALEZ-LOPEZ *v.* UNITED STATES (176 Fed. Appx. 516); JIMENEZ-CALDERON *v.* UNITED STATES (176 Fed. Appx. 500); ARELLANO-ESCALANTE *v.* UNITED STATES (174 Fed. Appx. 817); BORJAS-GUERRERO *v.* UNITED STATES (176 Fed. Appx. 441); SANTILLANO-RODRIQUEZ *v.* UNITED STATES (176 Fed. Appx. 500); DIAZ-ZAVALA *v.* UNITED STATES (180 Fed. Appx. 511); PENA-GARZA *v.* UNITED STATES (176 Fed. Appx. 444); MEZA-PEREZ *v.* UNITED STATES (176 Fed. Appx. 524); CRUZ-HERNANDEZ *v.* UNITED STATES (176 Fed. Appx. 521); and RAMIREZ-NICOLAS *v.* UNITED STATES (179 Fed. Appx. 917). C. A. 5th Cir. Certiorari denied.

No. 05–11587. BALLENGER *v.* MCMASTER, ATTORNEY GENERAL OF SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 697.

No. 05–11588. CARTER *v.* GRAMS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 480.

No. 05–11589. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 174 Fed. Appx. 668.

No. 05–11591. SCHEIB *v.* MELLON BANK ET AL. Super. Ct. Pa. Certiorari denied.

No. 05–11592. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 438.

No. 05–11593. SANCHEZ-MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 486.

No. 05–11594. ROLLINS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 188 S. W. 3d 553.

No. 05–11595. COUSINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 455 F. 3d 1116.

No. 05–11597. DAVILA-RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 399.

No. 05–11598. DIEKEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 432 F. 3d 906.

No. 05–11599. MACKENSTADT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 598.

No. 05–11601. JARVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 868.

No. 05–11602. JOHNSON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 127 Wash. App. 1026.

No. 05–11603. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–11605. PUGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 28.

No. 05–11606. MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 51.

No. 05–11607. NAPIER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 436 F. 3d 1133.

No. 05–11608. MARTINEZ-ALFARO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 483.

No. 05–11609. ALLEN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 360 N. C. 297, 626 S. E. 2d 271.

No. 05–11611. BROCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 199.

No. 05–11612. BERAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–11613. ALEXIS *v.* HOLMES, DISTRICT DIRECTOR, BUFFALO, IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–11614. PAULINO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–11615. LEDFORD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 443 F. 3d 702.

No. 05–11616. PEARSON *v.* TURPIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–11617. MERCER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 105.

No. 05–11619. WHITTED *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 171 Fed. Appx. 919.

No. 05–11620. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–11621. ROBINSON *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 443 F. 3d 718.

No. 05–11623. NYHUIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–11624. SAFRIT *v.* PINION, SUPERINTENDENT, PIEDMONT CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 430.

No. 05–11625. EDMONSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 37.

No. 05–11626. CARTER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 05–11628. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–11629. ROBINSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–11630. LISBEY *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 420 F. 3d 930.

No. 05–11631. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 518.

No. 05–11633. STEELE *v.* STANSBERRY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 495.

No. 05–11634. NICKOLA *v.* STORAGE TECHNOLOGY CORP. C. A. 10th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 658.

No. 05–11635. NANCE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 280 Ga. 125, 623 S. E. 2d 470.

No. 05–11636. MENDOZA-GONZALEZ, AKA CHAVEZ-NEVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 323.

No. 05–11637. NEUGEBAUER *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 649.

No. 05–11638. MCDANIEL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 175 Fed. Appx. 456.

No. 05–11640. JORGENSEN *v.* BELO INTERACTIVE ET AL. Ct. App. Ariz. Certiorari denied.

No. 05–11641. MARION *v.* SHERMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–11642. REED *v.* HELLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 205.

No. 05–11643. SIMELTON *v.* FRANK, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 446 F. 3d 666.

No. 05–11644. BEAR CHILD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 666.

No. 05–11645. ALMEIDA-VEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 637.

No. 05–11646. THURSTON *v.* FEDERAL BUREAU OF PRISONS. C. A. 11th Cir. Certiorari denied.

No. 05–11648. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 997.

No. 05–11649. WARDLEY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 05–11650. WEST *v.* BERGE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–11651. WEST *v.* HAUTAMAKI ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 672.

No. 05–11652. TRACEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–11653. CROSS, AKA SARAVIA, AKA GOINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 298.

No. 05–11654. CALLIES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 585.

No. 05–11655. PEEPLES *v.* OHIO. Ct. App. Ohio, Pickaway County. Certiorari denied.

No. 05–11657. BARBER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11658. EVANS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 883 A. 2d 146.

No. 05–11660. CLASS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 363 Ill. App. 3d 1193, —— N. E. 2d ——.

No. 05–11661. DANIELS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–11662. PRICE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–11663. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 336.

No. 05–11664. STANFORD *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–11665. NORMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 866.

No. 05–11666. BROWN *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 05–11668. SINGLETARY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–11669. STAPLETON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 439.

No. 05–11670. SIMMONS *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11671. WASHINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 437 F. 3d 829.

No. 05–11672. WAITHE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–11673. VALDEZ-REYES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 387.

No. 05–11674. CAMPBELL *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11675. DAVIS *v.* STAPLETON ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–11676. CALDERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 385.

No. 05–11677. KINDRIX *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–11678. KUTILEK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–11679. LEGRANDE *v.* POLK, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied.

No. 05–11680. LACAVA *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. Sup. Ct. Pa. Certiorari denied.

No. 05–11681. SMITH *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 647.

No. 05–11682. STEWART *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–11683. SINGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 66.

No. 05–11684. TOLEDO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–11687. BARROW *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 448 F. 3d 37.

No. 05–11688. AULT *v.* HAINES, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 339.

No. 05–11689. MITCHELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 203.

No. 05–11690. NEWTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–11691. CLEMENTE OLMEDO, AKA CONTRERAS *v.* UNITED STATES (Reported below: 172 Fed. Appx. 581); HERNANDEZ-PEREZ *v.* UNITED STATES (176 Fed. Appx. 446); BARRAZA-PEREZ *v.* UNITED STATES (176 Fed. Appx. 443); CRUZ-CERVANTES *v.* UNITED STATES (176 Fed. Appx. 533); HERNANDEZ-HERNANDEZ *v.* UNITED STATES (176 Fed. Appx.

524); RODRIGUEZ-JUAREZ, AKA HERNANDEZ-RODRIGUEZ *v.* UNITED STATES (176 Fed. Appx. 501); BERMUDEZ-OLIVAREZ *v.* UNITED STATES (176 Fed. Appx. 511); FIGUEROA-ROJAS *v.* UNITED STATES (176 Fed. Appx. 602); OSORIO-CARBALLO *v.* UNITED STATES (176 Fed. Appx. 604); PEREZ-TOJ *v.* UNITED STATES (181 Fed. Appx. 464); ZUNIGA-ALCALA, AKA ARMANDO ZUNIGA, AKA RAMON GARCIA, AKA GARCIA *v.* UNITED STATES (174 Fed. Appx. 197); GOMEZ-MORALES, AKA RAMIREZ-MORALES, AKA GONZALEZ-MORALES *v.* UNITED STATES (174 Fed. Appx. 831); ANDRADE *v.* UNITED STATES (176 Fed. Appx. 445); LOPEZ-RODRIGUEZ *v.* UNITED STATES (176 Fed. Appx. 447); PALACIO-GARCIA *v.* UNITED STATES (176 Fed. Appx. 527); and DIAZ-MARQUEZ *v.* UNITED STATES (177 Fed. Appx. 405). C. A. 5th Cir. Certiorari denied.

No. 05–11692. PEREZ *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–11693. PEAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 290.

No. 05–11694. JAQUEZ-MERCADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 154.

No. 05–11695. LITTLE *v.* HERRERA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–11696. MONROE *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 05–11697. MERCHANT *v.* STROHBEHN, EXECUTIVE DIRECTOR, ADULT COMMUNITY CORRECTIONS OF LARAMIE COUNTY, WYOMING, ET AL. Sup. Ct. Wyo. Certiorari denied.

No. 05–11699. ARIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 431 F. 3d 1327.

No. 05–11700. PEKER *v.* FADER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 164 Fed. Appx. 49.

No. 05–11701. PICKARD *v.* THOMPSON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 86.

No. 05–11703. MCCALISTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 599.

No. 05–11705. ROMERO-FLORES *v.* UNITED STATES (Reported below: 174 Fed. Appx. 807); ROMERO-VILLARREAL *v.* UNITED STATES (176 Fed. Appx. 432); and MARTINEZ-HIGAREDA *v.* UNITED STATES (177 Fed. Appx. 403). C. A. 5th Cir. Certiorari denied.

No. 05–11706. SILVA-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 702.

No. 05–11707. ROCK *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–11711. PIRTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 224.

No. 05–11713. PUGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 880.

No. 05–11714. LANDRAU-LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 444 F. 3d 19.

No. 05–11715. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 772.

No. 05–11716. MARTIN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11717. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 553.

No. 05–11718. SECKMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 193.

No. 05–11719. STEPHENSON *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–11720. SARNO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 659.

No. 05–11721. PURKEY *v.* GREEN, SHERIFF, WYANDOTTE COUNTY, KANSAS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 792.

No. 05–11722. REED *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 443 F. 3d 600.

No. 05–11723. RALEIGH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 932 So. 2d 1054.

No. 05–11724. LINDELL *v.* GOVIER. C. A. 7th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 999.

No. 05–11725. TATUM *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 925 So. 2d 317.

No. 05–11726. MENOTTI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 347 Ill. App. 3d 1108, 867 N. E. 2d 119.

No. 05–11727. ADDAMS-MORE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 144 Fed. Appx. 886.

No. 05–11728. AMARRA-HERRARTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 452.

No. 05–11730. BUZIA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 926 So. 2d 1203.

No. 05–11732. MCCREA ET AL. *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 649.

No. 05–11737. FOUST *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 05–11738. GRIFFIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 506.

No. 05–11739. GANN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 466.

No. 05–11740. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 972.

No. 05–11741. GOMEZ-MADRIGAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 326.

No. 05–11742. HAM *v.* PENNINGTON COUNTY BOARD OF COMMISSIONERS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 761.

No. 05–11743. FARMER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 670.

No. 05–11744. FEDOROWICZ *v.* UTAH. Ct. App. Utah. Certiorari denied.

No. 05–11745. GRULLON *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–11746. WHITE *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 846.

No. 05–11747. SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–11748. HURST *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 360 N. C. 181, 624 S. E. 2d 309.

No. 05–11749. FRANCISCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 165 Fed. Appx. 144.

No. 05–11752. HUGHES *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 05–11753. HERNANDEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–11754. HIGGINS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 918 So. 2d 309.

No. 05–11755. FRAUSTO-GARCIA *v.* UNITED STATES (Reported below: 172 Fed. Appx. 40); and GARCIA *v.* UNITED STATES (172 Fed. Appx. 46). C. A. 5th Cir. Certiorari denied.

No. 05–11756. HOEVENAAR *v.* LAZAROFF, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 3d 366.

No. 05–11757. GARCIA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 564.

No. 05–11758. CROWFFEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 249.

No. 05–11759. DALRYMPLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 608.

No. 05–11760. CARTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 79.

No. 05–11763. ORTIZ-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 3d 567.

No. 05–11766. LYONS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 450 F. 3d 834.

No. 05–11767. KENNEDY *v.* KENNEDY. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 05–11769. BYERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 234.

No. 05–11771. YORK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 655.

No. 05–11772. WHITE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–11773. GARVIN *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 219 Ill. 2d 104, 847 N. E. 2d 82.

No. 05–11774. HARDESTY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 697.

No. 05–11775. MANLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 531.

No. 05–11776. MCBRIDE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11777. WEST *v.* STOUFFER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 502.

No. 05–11778. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–11779. ALI *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 157 Fed. Appx. 601.

No. 05–11780. ARLINE *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–11781. WILLIAMS *v.* CITY OF LITTLE ROCK, ARKANSAS. C. A. 8th Cir. Certiorari denied.

No. 05–11782. WILLIAMS *v.* ROBERT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–11783. ALEXANDER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 05–11784. ANDERSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–11785. GOODMAN *v.* MCBRIDE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 216.

No. 05–11786. HAMANI, AKA CLEMONS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 147.

No. 05–11787. GRAHAM *v.* KANSAS ET AL. Sup. Ct. Kan. Certiorari denied.

No. 05–11788. GAMBLE *v.* JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 698.

No. 05–11789. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–11790. ISWED *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–11791. HOWARD *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–11792. HILTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 892.

No. 05–11793. GLASS *v.* YOUNG, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 247.

No. 05–11794. GONZALEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 490.

No. 05–11795. GREEN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS

DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 606.

No. 05–11796. FRANKLIN *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 05–11797. DIGSBY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–11798. ECHEVERRI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 170 Fed. Appx. 206.

No. 05–11800. EVANS *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–11801. ARGUETA MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–11802. LASSITER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–11803. LEAP *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 179 S. W. 3d 809.

No. 05–11804. GOMEZ-TRUJILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 324.

No. 05–11805. HARRIS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 359.

No. 05–11806. FRIEDRICH *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–11807. GONZALEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 874.

No. 05–11808. GARCIA, AKA REYNEROS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 452.

No. 05–11809. GARNIER *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 597.

No. 05–11811. HILL *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 607.

No. 05–11812. FINN *v.* HUMPHREY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–11813. FUENTES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 687.

No. 05–11814. BRYANT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 344.

No. 05–11815. VIRGIL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 444 F. 3d 447.

No. 05–11816. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–11817. CARTER *v.* DZURENDA, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–11818. DIXON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–11820. MANUELES MONTEJO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 F. 3d 213.

No. 05–11823. BOLTON *v.* AMSOUTH. C. A. 11th Cir. Certiorari denied.

No. 05–11824. CARR *v.* DWYER, SUPERINTENDENT, SOUTHEAST CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 05–11826. GRAHAM *v.* GALAZA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–11827. FIELDING *v.* MASSACHUSETTS JUDICIARY. C. A. 1st Cir. Certiorari denied.

No. 05–11828. HOFFMAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 883 A. 2d 688.

No. 05–11829. FLORENCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–11830. GUISHARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 163 Fed. Appx. 114.

No. 05–11831. HARPER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–11833. HEAD *v.* ADAMS, WARDEN. C. A. D. C. Cir. Certiorari denied.

No. 05–11834. GANN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 196.

No. 05–11835. HARRIS *v.* MARTIN, SUPERINTENDENT, MIAMI CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 05–11837. PERKINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 294.

No. 05–11838. LAFOUNTAIN *v.* CARUSO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–11839. JOHNSON *v.* HAUGLAND ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 139.

No. 05–11840. OLIVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–11841. VOEGTLIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 437 F. 3d 741.

No. 05–11842. WATKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–11843. VILARDO *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 05–11844. UNDER SEAL *v.* UNDER SEAL. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 217.

No. 05–11845. LANE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–11846. NUNEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–2. AUTHENTIC HANSOM CABS, LTD. *v.* NISSELSON, TRUSTEE, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 159 Fed. Appx. 221.

No. 06–3. PAYLESS SHOESOURCE, INC. *v.* ADIDAS AMERICA, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 268.

No. 06–4. WASHINGTON INTERNATIONAL INSURANCE CO. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 855.

No. 06–6. CAN-AM INTERNATIONAL, L. L. C. *v.* REPUBLIC OF TRINIDAD AND TOBAGO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 396.

No. 06–7. CLEMENTON BOARD OF EDUCATION *v.* P. N., INDIVIDUALLY AND BY AND THROUGH HIS PARENT AND LEGAL GUARDIAN, M. W. C. A. 3d Cir. Certiorari denied. Reported below: 442 F. 3d 848.

No. 06–8. UNITED RETIRED PILOTS BENEFIT PROTECTION ASSN. ET AL. *v.* UNITED AIR LINES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 443 F. 3d 565.

No. 06–9. HEAVRIN *v.* SCHILLING, TRUSTEE. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 3d 405.

No. 06–10. NORFOLK DREDGING CO. *v.* WILEY. C. A. 4th Cir. Certiorari denied. Reported below: 439 F. 3d 205.

No. 06–12. UNITED STATES EX REL. JOSHI *v.* ST. LUKE'S HOSPITAL, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 441 F. 3d 552.

No. 06–13. PIKE *v.* GOVERNMENT EMPLOYEES INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 311.

No. 06–14. WESTERN MANAGEMENT, INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 778.

No. 06–15. TOMIC *v.* CATHOLIC DIOCESE OF PEORIA. C. A. 7th Cir. Certiorari denied. Reported below: 442 F. 3d 1036.

No. 06–16. BROWN *v.* MCLEOD REGIONAL MEDICAL CENTER OF THE PEE DEE, INC. C. A. 4th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 672.

No. 06–18. RENTAL SYSTEMS, INC. *v.* TYSON ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 06–20. FARRALES ET AL. *v.* UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–21. FERNANDEZ, AKA MORENA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 443 F. 3d 19.

No. 06–22. WOLFERT, EXECUTOR OF THE ESTATE OF WOLFERT *v.* TRANSAMERICA HOME FIRST, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 439 F. 3d 165.

No. 06–24. VAN DE BERG *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 175 Fed. Appx. 539.

No. 06–25. BROOKS *v.* AMERICAN GENERAL FINANCIAL SERVICES, INC. C. A. 8th Cir. Certiorari denied.

No. 06–27. DCS SANITATION MANAGEMENT, INC. *v.* CASTILLO ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 435 F. 3d 892.

No. 06–29. KASLER *v.* BRIDGES ET AL. Ct. App. N. C. Certiorari denied.

No. 06–30. ALEX D. *v.* ARIZONA DEPARTMENT OF ECONOMIC SECURITY ET AL. Ct. App. Ariz. Certiorari denied.

No. 06–31. GASSER *v.* DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied. Reported below: 442 F. 3d 758.

No. 06–33. PG&E CORP. ET AL. *v.* CALIFORNIA EX REL. LOCKYER, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 433 F. 3d 1115.

No. 06–34. MACEWAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 445 F. 3d 237.

No. 06–35. MALONE *v.* AMERICAN EQUITY INVESTMENT LIFE INSURANCE CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 198.

No. 06–37. KALIL *v.* UNITED STATES DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, OFFICE OF

THE CHIEF ADMINISTRATIVE HEARING OFFICER, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 144 Fed. Appx. 158.

No. 06–39. HAIG *v.* DAMON ET AL. Sup. Ct. Haw. Certiorari denied. Reported below: 109 Haw. 502, 128 P. 3d 815.

No. 06–41. MILLS *v.* PARA-CHEM, DBA PARA-CHEM SOUTHERN, INC. C. A. 1st Cir. Certiorari denied.

No. 06–42. STRICKLAND *v.* ABBOTT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 973.

No. 06–45. PENLEY *v.* COLLIN COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 446 F. 3d 572.

No. 06–46. CLARK *v.* TILLEY, SHERIFF, PERQUIMANS COUNTY, NORTH CAROLINA, ET AL. Gen. Ct. Justice, Super. Ct. Div., Perquimans County, N. C. Certiorari denied.

No. 06–47. MARKHAM *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 434 F. 3d 1185.

No. 06–48. SOO KYANG KIM *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 242.

No. 06–50. JOHNSON *v.* WOODCOCK. C. A. 8th Cir. Certiorari denied. Reported below: 444 F. 3d 953.

No. 06–51. INCORVAIA *v.* INCORVAIA, NKA SHAFE, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 847.

No. 06–53. JONES *v.* BURNSIDE, JUDGE, COURT OF COMMON PLEAS, CUYAHOGA COUNTY, OHIO, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 113 Ohio St. 3d 1211, 863 N. E. 2d 617.

No. 06–54. HERTZ CORP. *v.* CATES, INDIVIDUALLY AND AS GUARDIAN OF THE PERSON OF CATES, AN INCAPACITATED PERSON. C. A. 5th Cir. Certiorari denied. Reported below: 431 F. 3d 456.

No. 06–55. MARTIN *v.* UNITED STATES COURT OF INTERNATIONAL TRADE. C. A. Fed. Cir. Certiorari denied. Reported below: 154 Fed. Appx. 909.

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No. 06–56. PARKER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 62 M. J. 459.

No. 06–57. PENNOCK ET UX., IN THEIR INDIVIDUAL CAPACITIES AND ON BEHALF OF THE ESTATE OF PENNOCK *v.* LENZI ET UX., IN THEIR INDIVIDUAL CAPACITIES AND DBA RIDGE CREST FARMS, ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 882 A. 2d 1057.

No. 06–60. COLORADO *v.* HUMPHREY. Sup. Ct. Colo. Certiorari denied. Reported below: 132 P. 3d 352.

No. 06–62. GAVLOCK ET AL. *v.* DENIKER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 176 Fed. Appx. 244.

No. 06–63. ROEMER *v.* BOARD OF EDUCATION OF THE CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 150 Fed. Appx. 38.

No. 06–64. RAMSEY *v.* IRVINE ET AL. Ct. App. Colo. Certiorari denied.

No. 06–65. RICHMOND ET UX. *v.* HIGGINS, DBA NICHOLAS G. HIGGINS & ASSOCIATES. C. A. 8th Cir. Certiorari denied. Reported below: 435 F. 3d 825.

No. 06–67. PHELPS *v.* ALAMEDA COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–68. MAUDER *v.* METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS, AKA METRO. C. A. 5th Cir. Certiorari denied. Reported below: 446 F. 3d 574.

No. 06–69. BESTOR *v.* LIEBERMAN, UNITED STATES SENATOR, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 06–70. DAVIS *v.* UNUM LIFE INSURANCE COMPANY OF AMERICA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 444 F. 3d 569.

No. 06–73. HILBERT ET AL. *v.* CONSECO SERVICES, L. L. C. Ct. App. Ind. Certiorari denied. Reported below: 836 N. E. 2d 1001.

No. 06–74. GHEORGHIU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 873.

No. 06–75. GONZALEZ-CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–80. LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT *v.* ROUYEA ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 913 So. 2d 892.

No. 06–85. MARICOPA COUNTY SHERIFF'S OFFICE ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 06–86. SMITH *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 666.

No. 06–89. BEVILL *v.* SPRINT COMMUNICATIONS CO., L. P. C. A. 1st Cir. Certiorari denied. Reported below: 163 Fed. Appx. 6.

No. 06–90. CAIN *v.* FORSHEY, JUDGE, CITY OF SCOTTSDALE MUNICIPAL COURT, ARIZONA, ET AL. Ct. App. Ariz. Certiorari denied.

No. 06–91. DIETRICH & ASSOCIATES *v.* ROGERS ET AL. Ct. App. Mich. Certiorari denied.

No. 06–92. EDWARDS ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 368.

No. 06–93. HANCOCK *v.* DEPARTMENT OF THE INTERIOR. C. A. Fed. Cir. Certiorari denied. Reported below: 176 Fed. Appx. 106.

No. 06–95. LITTLESUN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 444 F. 3d 1196.

No. 06–96. VEROLA *v.* COLTON, STATE ATTORNEY, NINETEENTH JUDICIAL CIRCUIT OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 446 F. 3d 1206.

No. 06–99. TURPIN *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 06–104. LANE *v.* WILSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 487.

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No. 06–106. RATSAVONG ET AL. *v.* MENEVILAY ET AL. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 176 S. W. 3d 661.

No. 06–107. RICHLIN SECURITY SERVICE CO. *v.* CHERTOFF, SECRETARY OF HOMELAND SECURITY. C. A. Fed. Cir. Certiorari denied. Reported below: 437 F. 3d 1296.

No. 06–108. SCOVENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 309.

No. 06–109. SMITH *v.* BROOKSHIRE BROTHERS, INC. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 176 S. W. 3d 30.

No. 06–110. SHETTY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 561.

No. 06–112. TORROMEO ET AL. *v.* TOWN OF FREMONT, NEW HAMPSHIRE. C. A. 1st Cir. Certiorari denied. Reported below: 438 F. 3d 113.

No. 06–113. PHILIPOSE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 636.

No. 06–115. ROBERTO *v.* FEJERAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 726.

No. 06–117. BRADY ET AL. *v.* ABBOTT LABORATORIES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 433 F. 3d 679.

No. 06–118. BORRELLI ET AL. *v.* PAULSON, SECRETARY OF THE TREASURY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 155 Fed. Appx. 556.

No. 06–121. QUINTANILLA *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 63 M. J. 29.

No. 06–123. WELTMAN, WEINBERG & REIS CO., L. P. A. *v.* TODD. C. A. 6th Cir. Certiorari denied. Reported below: 434 F. 3d 432.

No. 06–124. ALASKA RIGHT TO LIFE COMMITTEE *v.* MILES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 441 F. 3d 773.

No. 06–125. WILLIAMS *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–129. DUCKMAN *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 179 Vt. 467, 898 A. 2d 734.

No. 06–133. ATHLETIC ALTERNATIVES, INC. *v.* BENETTON TRADING USA, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 174 Fed. Appx. 571.

No. 06–135. PRALUTSKY *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 8th Cir. Certiorari denied. Reported below: 435 F. 3d 833.

No. 06–138. KIRKLAND *v.* KIRKLAND. Sup. Ct. Ga. Certiorari denied.

No. 06–141. GIVEN ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 638.

No. 06–143. WEST HOLLYWOOD COMMUNITY REDEVELOPMENT COMMISSION *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–148. SUTER ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 441 F. 3d 306.

No. 06–149. STUART *v.* GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 22 App. Div. 3d 131, 803 N. Y. S. 2d 577.

No. 06–151. ROTTSCHAEFER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 178 Fed. Appx. 145.

No. 06–153. ROWE ENTERTAINMENT, INC., ET AL. *v.* WILLIAM MORRIS AGENCY, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 167 Fed. Appx. 227.

No. 06–158. BRADLEY *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 181 Fed. Appx. 989.

No. 06–161. DECHERT, TRUSTEE FOR THE BANKRUPTCY ESTATE OF OYLER *v.* CADLE CO. C. A. 7th Cir. Certiorari denied. Reported below: 441 F. 3d 474.

No. 06–165. MARKOVSKI *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied.

No. 06–166. VAZQUEZ-BOTET *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 441 F. 3d 44.

No. 06–168. FOLLUM *v.* FOLLUM, AKA VIOLANTE. Ct. App. N. Y. Certiorari denied. Reported below: 6 N. Y. 3d 891, 850 N. E. 2d 672.

No. 06–178. POLANCO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–181. PEELER *v.* MCI, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 447 F. 3d 992.

No. 06–184. DELSON *v.* CINO, ACTING SECRETARY OF TRANSPORTATION. C. A. 2d Cir. Certiorari denied. Reported below: 144 Fed. Appx. 136.

No. 06–186. USX CORP. *v.* LIBERTY MUTUAL INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 444 F. 3d 192.

No. 06–187. WILSON, APPEARING IN HIS CAPACITY AS THE CURATOR OF THE INTERDICT, FONTENOT *v.* STATE FARM FIRE & CASUALTY CO. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 437.

No. 06–190. LOWGREN *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 157 Fed. Appx. 281.

No. 06–191. HAMM ET AL. *v.* MILLENNIUM INCOME FUND, L. L. C. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 178 S. W. 3d 256.

No. 06–196. SPANO ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 447 F. 3d 517.

No. 06–199. PACHECO *v.* CINO, ACTING SECRETARY OF TRANSPORTATION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 448 F. 3d 783.

No. 06–200. PIECZENIK *v.* NEW JERSEY ALTERNATE BENEFIT PROGRAM. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–202. TIMLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 443 F. 3d 615.

No. 06–203. ATANUS *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 434 F. 3d 1324.

No. 06–205. ALHALABI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 443 F. 3d 605.

No. 06–208. HARRISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 411.

No. 06–209. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 418 F. 3d 1206.

No. 06–212. MIRANDA *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 173 Fed. Appx. 840.

No. 06–215. CUETO *v.* STEPP, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–220. SANDERSON *v.* HCA-THE HEALTHCARE CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 447 F. 3d 873.

No. 06–221. BARNES *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 134 P. 3d 487.

No. 06–225. MITRANO *v.* KELLY. Sup. Ct. N. H. Certiorari denied.

No. 06–226. PARK *v.* BRAUN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 670.

No. 06–227. SHATLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 448 F. 3d 264.

No. 06–232. PERKINS ET AL. *v.* SEBRING ASSOCIATES/THE EXCELSIOR II ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 169 Fed. Appx. 686.

No. 06–238. WESTLANDS WATER DISTRICT *v.* STATE WATER RESOURCES CONTROL BOARD. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 136 Cal. App. 4th 674, 39 Cal. Rptr. 3d 189.

No. 06–239. HANSL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 439 F. 3d 850.

No. 06–251. CRAWFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 594.

No. 06–256. PARSONS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 174 Fed. Appx. 561.

No. 06–265. MAGYARI *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 63 M. J. 123.

No. 06–5001. WATSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–5002. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 443.

No. 06–5004. VINES *v.* ROBINSON, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 06–5005. MUMFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 767.

No. 06–5006. JACKSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–5007. MALDONADO-ASENCIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 980.

No. 06–5008. MUGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 441 F. 3d 622.

No. 06–5009. NEVAREZ-SANCHEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 582.

No. 06–5010. QUINONEZ-AISPURO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 884.

No. 06–5011. BARBOSA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 30.

No. 06–5012. BRIGGS *v.* CITY OF ASHEVILLE POLICE DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 524.

No. 06–5014. LEWIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–5016. THESSING *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 365 Ark. 384.

No. 06–5017. AYALA *v.* UNITED STATES (Reported below: 174 Fed. Appx. 829); CAMARILLO-DE LA CRUZ *v.* UNITED STATES (174 Fed. Appx. 244); RODRIGUEZ-MOCTEZUMA, AKA LOPEZ-MOCTEZUMA *v.* UNITED STATES (176 Fed. Appx. 438); SARAVIA-CASARES *v.* UNITED STATES (177 Fed. Appx. 381); ALFARO, AKA BORJAS *v.* UNITED STATES (176 Fed. Appx. 450); PELAES-FUNTEZ *v.* UNITED STATES; PEREZ-SANCHEZ *v.* UNITED STATES (176 Fed. Appx. 488); FERNANDEZ-CUSCO *v.* UNITED STATES (447 F. 3d 382); ESTRADA-BORJAS, AKA MARQUEZ *v.* UNITED STATES (174 Fed. Appx. 820); RESENDIZ-RIOS *v.* UNITED STATES (180 Fed. Appx. 539); and ARCHUNDIA, AKA ARCHUNDIA-MENDOZA, AKA ARCHUNDIA-BUSTOS *v.* UNITED STATES (182 Fed. Appx. 354). C. A. 5th Cir. Certiorari denied.

No. 06–5018. ADEYI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 165 Fed. Appx. 944.

No. 06–5019. BRAXTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 926 So. 2d 1262.

No. 06–5020. PARKER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1235, —— N. E. 2d ——.

No. 06–5022. CALLOWAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 964.

No. 06–5023. CARTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 883.

No. 06–5024. CANO-ROBLEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 629.

No. 06–5025. MORRIS, AKA HARRIS *v.* RICE ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5026. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 438 F. 3d 1272.

No. 06–5027. KNOWLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 110.

No. 06–5028. ZIED-CAMPBELL *v.* PENNSYLVANIA DEPARTMENT OF TRANSPORTATION. Commw. Ct. Pa. Certiorari denied.

No. 06–5029. TORRES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5030. SCINTO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 239.

No. 06–5031. SANTOS *v.* SCRIBNER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5032. RIES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5033. SARES *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 06–5034. SATTERFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 16.

No. 06–5035. REYES-MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5036. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 451 F. 3d 209.

No. 06–5038. WILLIFORD *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–5039. PETTWAY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 926 So. 2d 1283.

No. 06–5040. PACHECO-NAVARETTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 432 F. 3d 967.

No. 06–5043. LYNCH *v.* FICCO, SUPERINTENDENT, SOUZA-BARANOWSKI CORRECTIONAL CENTER, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 438 F. 3d 35.

No. 06–5045. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 791.

No. 06–5047. ROCHA *v.* CHILDRESS, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 387.

No. 06–5048. RIVERS *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–5049. SEIBERT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 923 So. 2d 460.

No. 06–5051. POWELL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5052. ABOUGHANTOUS *v.* ANSELMO ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 913 So. 2d 897.

No. 06–5054. TOLLETTE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 280 Ga. 100, 621 S. E. 2d 742.

No. 06–5055. PINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5056. STERLING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 515.

No. 06–5058. PEREZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5060. CLARK *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–5062. YARBROUGH *v.* UNITED STATES (Reported below: 176 Fed. Appx. 466); OSHO *v.* UNITED STATES (176 Fed. Appx. 461); and LEDESMA *v.* UNITED STATES (176 Fed. Appx. 463). C. A. 5th Cir. Certiorari denied.

No. 06–5063. WEBSTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 442 F. 3d 1065.

No. 06–5064. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–5065. MASSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 769.

No. 06–5066. LETOURNEAU *v.* KANSAS. Ct. App. Kan. Certiorari denied.

No. 06–5067. LOYD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–5068. COOPER *v.* HUMPHREY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–5069. CRAWFORD *v.* WAYNE COUNTY COMMUNITY COLLEGE DISTRICT. C. A. 6th Cir. Certiorari denied.

No. 06–5070. RHODES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 315.

No. 06–5071. SMITH *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 928 So. 2d 190.

No. 06–5074. ARNOLD *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 06–5075. BELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–5077. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5078. LONDON *v.* HARRIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5079. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–5081. HANSEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 434 F. 3d 92.

No. 06–5082. HICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 505.

No. 06–5083. HOLDER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 425.

No. 06–5084. GIBSON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 175 N. C. App. 223, 622 S. E. 2d 729.

No. 06–5085. HUMES ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 291.

No. 06–5086. GARDNER *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 882.

No. 06–5087. WALLER, AKA WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 622.

No. 06–5088. TAYLOR *v.* SMITH, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 06–5089. WATTLETON *v.* BEELER, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 852.

No. 06–5091. SWINSON *v.* WALLACE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–5092. RAY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–5094. ALEXANDER *v.* SHAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 571.

No. 06–5095. ALMONTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5096. BROWN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5097. BURTON *v.* DEROOY ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–5098. BOWMAN *v.* NEAL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 819.

No. 06–5099. YAZDCHI ET AL. *v.* BANK ONE, TEXAS, N. A., ET AL. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 177 S. W. 3d 399.

No. 06–5100. DAVIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 928 So. 2d 1089.

No. 06–5101. ELLIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5103. CARBAJAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 775.

No. 06–5104. ARMBECK *v.* QUINONES ET AL. C. A. 10th Cir. Certiorari denied.

No. 06–5105. BIRULA-HERNANDEZ *v.* UNITED STATES (Reported below: 174 Fed. Appx. 835); VILLASENOR-ARROYO *v.* UNITED STATES (174 Fed. Appx. 224); GUEVARA, AKA BUCHID-VILLANUEVA *v.* UNITED STATES (176 Fed. Appx. 457); PEREZ-TOSTADO *v.* UNITED STATES (178 Fed. Appx. 406); and VILLANUEVA *v.* UNITED STATES (174 Fed. Appx. 216). C. A. 5th Cir. Certiorari denied.

No. 06–5106. KADIKU *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 06–5108. RAMOS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–5109. REYNOLDS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5110. DONALDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 965.

No. 06–5111. DABNEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5112. FICKEN, INDIVIDUALLY, AND AS FATHER, BEST FRIEND, AND ON BEHALF OF IVANOF, A MINOR CHILD *v.* GOLDEN ET AL. (two judgments). C. A. D. C. Cir. Certiorari denied.

No. 06–5114. PENA *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5115. SMITH *v.* BAYLY, ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, ET AL. Ct. App. D. C. Certiorari denied.

No. 06–5116. RICHARD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5117. RAMIREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 514.

No. 06–5118. MIRANDA-MOYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 227.

No. 06–5120. MENDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 159 Fed. Appx. 436.

No. 06–5121. McLittle *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 06–5122. Macias-Ortiz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 940.

No. 06–5123. Mack *v.* Carey, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 159 Fed. Appx. 799.

No. 06–5124. James *v.* York County Police Department et al. C. A. 3d Cir. Certiorari denied. Reported below: 160 Fed. Appx. 126.

No. 06–5125. Lane *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 686.

No. 06–5126. West *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 219.

No. 06–5127. Serna-Flores *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 547.

No. 06–5128. Saphao *v.* California. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 126 Cal. App. 4th 935, 24 Cal. Rptr. 3d 453.

No. 06–5129. Shuler *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 218.

No. 06–5130. Moberg *v.* Mosley, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 06–5131. Ocasio *v.* Palakovich, Superintendent, State Correctional Institution at Smithfield, et al. C. A. 3d Cir. Certiorari denied.

No. 06–5132. Pugh *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 175 Fed. Appx. 390.

No. 06–5133. Deras-Rodriguez, aka Devas-Rodriguez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 355.

No. 06–5134. Abelmessih *v.* Rucker et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–5135. WILKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 604.

No. 06–5136. BUTLER *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 06–5137. WALLACE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5138. TAPP *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 06–5140. NOYES *v.* HENRY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–5141. OWENS *v.* MOORE ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–5143. O'BRIAN *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 445 Mass. 720, 840 N. E. 2d 500.

No. 06–5144. OGUNYALE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 06–5145. PASTOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 565.

No. 06–5146. NEELEY *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–5147. WILCHER *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 279.

No. 06–5150. KELLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5151. LOPEZ PARRA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 443 F. 3d 1026.

No. 06–5153. WILLIAMS *v.* WITHROW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–5154. WEISWASSER *v.* MENDOZA-POWERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5155. SPARKS *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 930.

No. 06–5156. RYAN *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 139 N. M. 354, 132 P. 3d 1040.

No. 06–5157. SMITH *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 830.

No. 06–5158. SEATON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 860.

No. 06–5159. PELLOT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5161. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 806.

No. 06–5163. LARES-NIEBLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 867.

No. 06–5164. CLEMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 699.

No. 06–5165. ANTHONY ET AL. *v.* FAHEY, CHAIRPERSON, VIRGINIA PAROLE BOARD, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 144.

No. 06–5168. ARTHUR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 19.

No. 06–5169. AL-SAFTY *v.* HOWARD UNIVERSITY. Ct. App. D. C. Certiorari denied. Reported below: 869 A. 2d 368.

No. 06–5170. MARION *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 06–5171. ERBY *v.* KULA. C. A. 6th Cir. Certiorari denied.

No. 06–5172. KADIKU *v.* GONZALES, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 06–5173. WASHINGTON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5174. VERDONE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5175. BUSH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–5176. BENTLEY *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5177. BURKE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5178. LUGO *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5179. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5180. LETELLIER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 545.

No. 06–5181. WALKER *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 06–5182. SHIFFLETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 331.

No. 06–5183. RAMIREZ-AGUILAR, AKA RAMIREZ *v.* UNITED STATES (Reported below: 177 Fed. Appx. 384); PATINO-TARIN *v.* UNITED STATES (176 Fed. Appx. 483); ISLAS DEL ANGEL *v.* UNITED STATES (176 Fed. Appx. 442); FLORES-ZAMUDIO *v.* UNITED STATES (177 Fed. Appx. 396); and MORA-MARTINEZ, AKA MARTINEZ-MORA, AKA RUIZ GARCIA, AKA MENDES, AKA ONTIVEROS *v.* UNITED STATES (176 Fed. Appx. 613). C. A. 5th Cir. Certiorari denied.

No. 06–5184. SAMUSEVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 916.

No. 06–5188. VERDUZCO-AYALA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 740.

No. 06–5189. NEALY *v.* GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 06–5191. CHAVIR-CASTRO, AKA DE JESUS CHAVIR, AKA ALLENDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 506.

No. 06–5192. CARRILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 790.

No. 06–5193. MITCHELL *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 6 N. Y. 3d 767, 844 N. E. 2d 785.

No. 06–5194. DOZIER *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–5197. WILLIAMS *v.* CORRECTIONAL MEDICAL SERVICES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 882.

No. 06–5198. AYER *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–5199. BARTOLO-CARBAJAL *v.* UNITED STATES (Reported below: 176 Fed. Appx. 532); BUSTAMANTE-PEREZ *v.* UNITED STATES (176 Fed. Appx. 477); DIAZ-SANTANA *v.* UNITED STATES (177 Fed. Appx. 401); TREVINO FLORES *v.* UNITED STATES (176 Fed. Appx. 440); FLORES-PINEDA *v.* UNITED STATES (177 Fed. Appx. 402); GARCIA-SANCHEZ, AKA JERNANDEZ-MAR *v.* UNITED STATES (180 Fed. Appx. 544); GRADILLA-GONZALEZ *v.* UNITED STATES (176 Fed. Appx. 568); GUEVARA *v.* UNITED STATES (176 Fed. Appx. 490); GUEVARA-SOSA *v.* UNITED STATES (175 Fed. Appx. 685); LLANOS-REYES *v.* UNITED STATES (176 Fed. Appx. 508); LOPEZ-HERNANDEZ, AKA LOPEZ *v.* UNITED STATES (176 Fed. Appx. 436); PARAJON *v.* UNITED STATES (178 Fed. Appx. 348); RODRIGUEZ-ALVARADO *v.* UNITED STATES (176 Fed. Appx. 499); SANCHEZ-LOPEZ *v.* UNITED STATES (182 Fed. Appx. 355); and TURINO-TURINO *v.* UNITED STATES (177 Fed. Appx. 385). C. A. 5th Cir. Certiorari denied.

No. 06–5200. THORNTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 444 F. 3d 1163.

No. 06–5201. DEWALT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 330.

No. 06–5202. THOMAS *v.* JETER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 479.

No. 06–5203. RAMOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5204. ROJAS-SANTANA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 887.

No. 06–5206. HUNG NGUYEN *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5207. PRICE *v.* SHINN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 803.

No. 06–5208. ZONG LOR *v.* JENKINS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 569.

No. 06–5209. SAEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 444 F. 3d 15.

No. 06–5210. STEWART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 179 Fed. Appx. 814.

No. 06–5211. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 673.

No. 06–5212. ARANSIOLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 473.

No. 06–5213. WARREN *v.* FINNAN, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 06–5214. PRICE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 876 A. 2d 988.

No. 06–5215. LINCOLN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 275.

No. 06–5216. LAMB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 889.

No. 06–5218. MASON *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 447 F. 3d 693.

No. 06–5219. LOUNSBURY *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 773.

No. 06–5220. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 294.

No. 06–5221. UNDERWOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 446 F. 3d 1340.

No. 06–5222. RIGGS *v.* AETNA LIFE INSURANCE CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 659.

No. 06–5223. REEP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 441 F. 3d 254.

No. 06–5224. RAGLAND *v.* PEARSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 159 Fed. Appx. 488.

No. 06–5225. CASILLAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 688.

No. 06–5226. MITCHELL *v.* LANGLEY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 900.

No. 06–5227. BARNETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 149.

No. 06–5228. ALLEN *v.* HARVEY, SECRETARY OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 177 Fed. Appx. 977.

No. 06–5229. HANG LE-THY TRAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 433 F. 3d 472.

No. 06–5231. PRECIADO, AKA PRECIADU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 160.

No. 06–5232. COLEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 909.

No. 06–5233. EBERHART *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 434 F. 3d 935.

No. 06–5234. JOHNSON, AKA REED *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 872 A. 2d 1271.

No. 06–5235. BIERLEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 880 A. 2d 3.

No. 06–5236. PARRISH *v.* WHORTON, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–5238. TAYLOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 970.

No. 06–5239. LOPEZ-CARRILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 913.

No. 06–5240. MARIAN *v.* CITY OF SAN BUENAVENTURA, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–5241. TERRY *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 974.

No. 06–5242. TINKER *v.* MARTIN, SUPERINTENDENT, MIAMI CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 06–5243. THURMAN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5246. HASAN *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 557.

No. 06–5248. HARRIS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 06–5249. GONZALEZ *v.* VARE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 849.

No. 06–5250. GOODS *v.* CROWN CENTER COMPLEX ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 507.

No. 06–5252. GEAMES, AKA GREAMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 857.

No. 06–5253. GRIMALDO-RESENDIZ, AKA RESENDIZ GRIMALDO, AKA GRIMALDO *v.* UNITED STATES (Reported below: 176 Fed. Appx. 485); and MARTINEZ-DELCID *v.* UNITED STATES (176 Fed. Appx. 503). C. A. 5th Cir. Certiorari denied.

No. 06–5255. HAGGINS *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 505.

No. 06–5256. ROJAS-TAPIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 446 F. 3d 1.

No. 06–5257. ROLES *v.* MADDOX. C. A. 9th Cir. Certiorari denied. Reported below: 439 F. 3d 1016.

No. 06–5259. HURLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 142.

No. 06–5262. HAMPTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 402.

No. 06–5264. FISHER *v.* TAPIA, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 356.

No. 06–5265. HENTZ *v.* HILL, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 06–5267. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 662.

No. 06–5268. GRAY *v.* DINWIDDIE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 741.

No. 06–5269. CARMONA-CEPEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 399.

No. 06–5270. CONTRERAS DIAZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 702.

No. 06–5271. SIMMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 441 F. 3d 313.

No. 06–5272. RAMIREZ-BARAJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 639.

No. 06–5273. SINGH *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 925.

No. 06–5274. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 471.

No. 06–5276. MUHAMMAD *v.* HOLT ET AL. Sup. Ct. Ill. Certiorari denied.

No. 06–5277. MURRAY *v.* ARIZONA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 539.

No. 06–5278. THOMPSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5279. THOMAS *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 06–5280. WILTON *v.* LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–5281. STRAIT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–5282. REVIERE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–5283. BENNETT *v.* HELLING, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 926.

No. 06–5284. BOULANGER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 444 F. 3d 76.

No. 06–5285. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5286. NUNEZ *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 93 Conn. App. 818, 890 A. 2d 636.

No. 06–5288. OWENS *v.* LUND, SUPERINTENDENT, CLARINDA CORRECTIONAL FACILITY. C. A. 8th Cir. Certiorari denied.

No. 06–5290. DAWKINS *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 152 Fed. Appx. 45.

No. 06–5291. DELEON *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–5293. COSTANTINO *v.* GRIGAS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 927.

No. 06–5294. COLLETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 402.

No. 06–5296. MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 490.

No. 06–5297. PEGUES *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 289 Wis. 2d 549, 710 N. W. 2d 725.

No. 06–5299. STOCKETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 157 Fed. Appx. 920.

No. 06–5300. HUMMINGWAY *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 170 Fed. Appx. 140.

No. 06–5301. PRICE *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 06–5302. PATTERSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–5303. TSHIBAKA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5304. BREEDLOVE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 916 So. 2d 726.

No. 06–5305. WHITE *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 176 Fed. Appx. 130.

No. 06–5307. ALONSO-MACIEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 486.

No. 06–5310. CONNER *v.* MOBILE MINI, INC. C. A. 3d Cir. Certiorari denied. Reported below: 167 Fed. Appx. 292.

No. 06–5311. WARDLAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5312. WITCHER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5313. SNIPES *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 06–5314. SANDERS *v.* HULICK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–5315. ROSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–5316. SUMBRY *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON, ET AL. Ct. App. D. C. Certiorari denied.

No. 06–5317. SNOOK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5319. LIM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 444 F. 3d 910.

No. 06–5320. JACKSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 437 F. 3d 1290.

No. 06–5321. AGUILAR-MARTINEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 612.

No. 06–5322. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 423.

No. 06–5323. DUNN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 288.

No. 06–5324. MANNING *v.* CRANE ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–5325. FERNANDEZ-MENDOZA *v.* UNITED STATES (Reported below: 176 Fed. Appx. 790); GUZMAN-VILLANUEVA *v.* UNITED STATES (176 Fed. Appx. 489); RIVAS-ZUBIATE *v.* UNITED STATES (176 Fed. Appx. 487); SERRATO-BALDERAS *v.* UNITED STATES (176 Fed. Appx. 484); ZEPEDA-CARLON *v.* UNITED STATES (176 Fed. Appx. 518); and RAMIREZ-ROSAS, AKA HUMBERTO *v.* UNITED STATES (177 Fed. Appx. 379). C. A. 5th Cir. Certiorari denied.

No. 06–5326. SIFUENTES IBARRA, AKA SIFUENTES-IBARRA, AKA SIFUENTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 195.

No. 06–5327. HUGHES *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 448.

No. 06–5328. HENRY *v.* TERRY, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 06–5329. GARDERE *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5330. GIVENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 570.

No. 06–5333. COLLINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–5334. REHBERGER *v.* CRAIG, CHIEF JUDGE, SUPERIOR COURT OF GEORGIA, FLINT JUDICIAL CIRCUIT, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5336. RODRIGUEZ-MACIAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–5337. WOODARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 847.

No. 06–5338. LOUIS *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 06–5339. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 635.

No. 06–5341. ERWIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 705.

No. 06–5342. EKSTROM *v.* SCHWARTZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5343. BUFF *v.* BUDGE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 411.

No. 06–5344. BURKHART *v.* POTTER, POSTMASTER GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 166 Fed. Appx. 650.

No. 06–5345. BERMUDEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–5346. ANDERSON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 129 Wash. App. 1012.

No. 06–5347. BOYADZHYAN-ASENSIO *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 50.

No. 06–5348. BROWN *v.* THOMPSON, WARDEN. Super. Ct. Telfair County, Ga. Certiorari denied.

No. 06–5349. BOONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 524.

No. 06–5350. BENNETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–5351. JACKSON *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 06–5352. LEGER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 926 So. 2d 509.

No. 06–5354. ROSENBERGER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–5358. LOPATKA *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 713 N. W. 2d 248.

No. 06–5360. COFFMAN *v.* HIGGINS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 644.

No. 06–5361. WRIGHT *v.* TRANSPORTATION SECURITY ADMINISTRATION. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 13.

No. 06–5362. KING *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE. C. A. 3d Cir. Certiorari denied.

No. 06–5363. LARSON *v.* SCHUETZLE, WARDEN. Sup. Ct. N. D. Certiorari denied. Reported below: 712 N. W. 2d 617.

No. 06–5364. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5365. NZONGOLA *v.* SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARING AND APPEAL, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 06–5366. NICHOLAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 176 Fed. Appx. 148.

No. 06–5367. ROCHA-ROMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 628.

No. 06–5368. LANE *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 174 S. W. 3d 376.

No. 06–5370. SIERRA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–5371. TEAGUE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 443 F. 3d 1310.

No. 06–5375. DOZIER *v.* SIMMONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 160.

No. 06–5376. GEIGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 291.

No. 06–5378. GRIFFIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 935.

No. 06–5379. HARRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 270.

No. 06–5380. FLETCHER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 925 So. 2d 1036.

No. 06–5381. HOOPER *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 06–5382. FLORES-TEJADA, AKA HERNANDEZ-TEJADA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5383. GRADY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–5384. HILL *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 766.

No. 06–5385. ANGULO-HERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 79.

No. 06–5387. FREDERICK *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 637.

No. 06–5388. HUTCHERSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 06–5389. HOLIDAY *v.* PALAKOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 176 Fed. Appx. 284.

No. 06–5390. HARRIS *v.* ANDERSON, WARDEN, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 109 Ohio St. 3d 101, 846 N. E. 2d 43.

No. 06–5391. GALYEN *v.* OHIO. Ct. App. Ohio, Clark County. Certiorari denied.

No. 06–5393. ELDICK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 443 F. 3d 783.

No. 06–5394. CHARLES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–5395. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 445 F. 3d 865.

No. 06–5396. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–5397. LEWIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5398. MARTIN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 169.

No. 06–5399. HURLEY *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 06–5402. FLORA, AKA HAYES *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 925 So. 2d 797.

No. 06–5403. HENLEY *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 06–5404. FAISON *v.* ROSADO MARTINEZ ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5405. GREEN *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 280 Kan. 758, 127 P. 3d 241.

No. 06–5406. FOHNE *v.* JOHANNS, SECRETARY OF AGRICULTURE. C. A. 7th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 674.

No. 06–5407. PASTOR HERNANDEZ *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5408. HUFF *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 929 So. 2d 1053.

No. 06–5410. FALCETTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 762.

No. 06–5411. GORDON *v.* GORDON ET AL. Sup. Ct. Pa. Certiorari denied.

No. 06–5412. ROBINSON *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 371.

No. 06–5415. JONES *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF CENTRAL FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 930 So. 2d 621.

No. 06–5416. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 681.

No. 06–5417. KIRSCHENHUNTER *v.* BEAUREGARD PARISH SHERIFF'S OFFICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 362.

No. 06–5418. BARR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 882.

No. 06–5419. AHMED *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 568.

No. 06–5420. BURRELL *v.* HENDERSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 434 F. 3d 826.

No. 06–5421. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5422. O'CONNER-COLON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5423. DACUA, AKA MONTOYA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 181 Fed. Appx. 180.

No. 06–5424. DENNY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 441 F. 3d 1220.

No. 06–5425. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5426. HAMILTON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 06–5427. HANNAH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 174 Fed. Appx. 671.

No. 06–5428. HENRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5429. HOWARD, AKA TAYLOR *v.* CHASE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–5430. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–5432. IVY *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 188 S. W. 3d 132.

No. 06–5433. HENSON *v.* SOUTHWEST AIRLINES CO. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 180 S. W. 3d 841.

No. 06–5434. GRIFFIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 440 F. 3d 1138.

No. 06–5435. TAVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 184 Fed. Appx. 25.

No. 06–5436. WHITE *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 221 Ill. 2d 1, 849 N. E. 2d 406.

No. 06–5437. MALDONADO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 98.

No. 06–5438. MIRANDA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5440. PYNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 639.

No. 06–5441. SEABURG *v.* ENGLAND, SECRETARY OF THE NAVY. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 725.

No. 06–5443. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 914.

No. 06–5444. RANSOM *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 525.

No. 06–5445. CHARON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 442 F. 3d 881.

No. 06–5446. DAVIS *v.* MITCHELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 199.

No. 06–5447. CROSBY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–5448. CURTIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 380 F. 3d 1131.

No. 06–5449. JENSEN *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 439 F. 3d 1086.

No. 06–5450. LORIANO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5452. KOHL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 651.

No. 06–5453. WARFIELD *v.* SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied.

No. 06–5454. TORRES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5455. MIGLIORE *v.* BOARD OF REVIEW, NEW JERSEY DEPARTMENT OF LABOR. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–5456. PAYNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 973.

No. 06–5458. BECKSTEAD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 217.

No. 06–5459. AMRHEIN-MACON *v.* WOOD ET AL. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 06–5460. DOWDEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 370.

No. 06–5461. SIMMONS *v.* BRUCE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 709.

No. 06–5462. JOHNSON *v.* VALI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 712.

No. 06–5463. SMALLWOOD *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 944.

No. 06–5464. SPEARS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 443 F. 3d 1358.

No. 06–5465. VELASQUEZ-RUBIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 860.

No. 06–5467. WARD *v.* MALONEY. C. A. 4th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 986.

No. 06–5468. MONTALVO-VILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 724.

No. 06–5469. WENZEL *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 185 S. W. 3d 715.

No. 06–5470. WHITE *v.* SOARES, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 06–5471. CHAPOTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 751.

No. 06–5472. DUARTE-ANTOLINO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5473. VALDEZ-MALTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 443 F. 3d 910.

No. 06–5474. POWERS *v.* DEPARTMENT OF LABOR ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–5475. MCKNIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–5476. REED *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 184.

No. 06–5477. VANHOOSE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 437 F. 3d 497.

No. 06–5478. WOODALL *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 06–5479. BIGHAM *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5480. BOYETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–5481. THOMPSON *v.* TURNAGE. C. A. 6th Cir. Certiorari denied.

No. 06–5482. BALTER *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 172 Fed. Appx. 401.

No. 06–5483. BIGGINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5484. BULLOCK *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–5485. BROWN *v.* UNITED STATES; and
No. 06–5510. GIBSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 432 F. 3d 1189.

No. 06–5486. SANCHEZ BEDOYA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5487. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 930 So. 2d 623.

No. 06–5488. MOX *v.* MICHIGAN. Cir. Ct. Macomb County, Mich. Certiorari denied.

No. 06–5489. RODRIGUEZ *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5490. SONTCHI *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 06–5491. FIELDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 176 Fed. Appx. 327.

No. 06–5492. COVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 885.

No. 06–5493. DERIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5494. IRVIN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 940 So. 2d 331.

No. 06–5495. HEAVIN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5496. GLAUM *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5497. GLASGOW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 314.

No. 06–5498. FULTON *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 180 Fed. Appx. 907.

No. 06–5499. HENDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 440 F. 3d 453.

No. 06–5501. HAYWARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 177 Fed. Appx. 214.

No. 06–5502. HERRERA-NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 362.

No. 06–5503. WILSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 931 So. 2d 903.

No. 06–5505. DUNGEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 361 Ill. App. 3d 1086, 911 N. E. 2d 5.

No. 06–5507. WILSON *v.* NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 326.

No. 06–5508. DE LEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 358.

No. 06–5509. WELLS *v.* UPTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5511. TEJADA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5512. BEAZLEY *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 908.

No. 06–5513. BORDERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–5514. BODNAR *v.* MARTIN, SUPERINTENDENT, MIAMI CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 06–5516. ANDRADE-RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 684.

No. 06–5517. BLACKWOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 761.

No. 06–5518. BARTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5519. SANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 221.

No. 06–5520. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 308.

No. 06–5521. STEPHENS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5522. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5523. RAMIREZ *v.* SANTA FE COUNTY ADULT DETENTION CENTER. C. A. 10th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 720.

No. 06–5524. SERGE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 586 Pa. 671, 896 A. 2d 1170.

No. 06–5525. SOTO *v.* ALTO. C. A. 6th Cir. Certiorari denied.

No. 06–5526. LEWIS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5527. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 447.

No. 06–5528. WILLIAMS *v.* PRINCE. C. A. 6th Cir. Certiorari denied.

No. 06–5530. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 319.

No. 06–5531. EVANS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 694.

No. 06–5532. MUSGROVE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5533. DALTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–5534. OBREICHT *v.* BARTOW, DIRECTOR, WISCONSIN RESOURCE CENTER. C. A. 7th Cir. Certiorari denied.

No. 06–5535. NANCE *v.* WEST, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–5536. PHILLIPS *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5537. SASH *v.* ZENK, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 3d 132.

No. 06–5539. DISON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 923 So. 2d 1169.

No. 06–5540. MORALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5542. GILBREATH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 700.

No. 06–5544. HECK *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–5545. GRANDISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 300.

No. 06–5546. GOODE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 219.

No. 06–5547. GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 939.

No. 06–5548. GAYLES *v.* BRANDON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–5550. HAGOS *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 06–5551. HENDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 310.

No. 06–5552. HUNTER *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 06–5555. COCHRAN *v.* GORMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 635.

No. 06–5556. DUNLAP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5557. CARTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 572.

No. 06–5558. PATTERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5560. YORK *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–5561. MOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 634.

No. 06–5562. SECREST *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5563. WALKER *v.* GALLEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 382.

No. 06–5564. WOODALL *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 06–5565. BRANDEL-MENA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 929.

No. 06–5566. MINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 736.

No. 06–5567. BENSKIN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–5569. ARMSTEAD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–5570. BOYD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 139.

No. 06–5571. MUMANI *v.* GILMORE. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 06–5572. BOZEMAN *v.* JAFFEY. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 21 App. Div. 3d 1344, 801 N. Y. S. 2d 187.

No. 06–5573. FERQUERON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–5574. FORD *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 179 S. W. 3d 203.

No. 06–5575. HAWKMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 438 F. 3d 879.

No. 06–5576. CARBE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–5577. WYNGLARZ *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 626.

No. 06–5578. WILLIAMS *v.* BRADSHAW, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 176.

No. 06–5579. DODSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–5580. WILLIAMS *v.* EHLENZ ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–5581. YOUNG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 456.

No. 06–5582. TAYLOR-WATLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 903.

No. 06–5583. CORCORAN *v.* FARWELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 655.

No. 06–5585. SOW *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 180 Fed. Appx. 278.

No. 06–5592. ANDERSON *v.* OSH KOSH B'GOSH. C. A. 11th Cir. Certiorari denied.

No. 06–5593. BURGOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 431 F. 3d 1327.

No. 06–5594. MULLINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 446 F. 3d 750.

No. 06–5596. PROCTOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 372.

No. 06–5597. ROY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 164.

No. 06–5601. SMITH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 436 F. 3d 9.

No. 06–5603. MANDHAI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 576.

No. 06–5604. CHALA PEREIDA *v.* CHANOS, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 693.

No. 06–5605. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 417 F. 3d 990.

No. 06–5606. SNYPE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 441 F. 3d 119.

No. 06–5607. REID *v.* JULIUS BLUM, INC. Ct. App. N. C. Certiorari denied.

No. 06–5608. ROBINSON *v.* CROUSE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 813.

No. 06–5609. SAUNDERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 484.

No. 06–5612. HARPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 448 F. 3d 732.

No. 06–5614. DAWSON *v.* MILLER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 739.

No. 06–5615. COHEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 822.

No. 06–5617. CURETON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5619. VILLALONA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 184 Fed. Appx. 23.

No. 06–5621. MARTIN *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 06–5622. GRAHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–5623. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 955.

No. 06–5624. LIZAMA-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 396.

No. 06–5627. HECKENLIABLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 446 F. 3d 1048.

No. 06–5628. GENTRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 435.

No. 06–5631. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–5632. FAHIE *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 180 Fed. Appx. 936.

No. 06–5635. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 271.

No. 06–5637. MALONE *v.* JENKINS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–5639. MATHISON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–5645. METCALF *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5649. MCCOMIC *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5652. COFFMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 389.

No. 06–5654. HARVEY *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 294.

No. 06–5656. BREITBACH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 597.

No. 06–5661. GARDNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 839.

No. 06–5663. MARQUEZ *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 06–5664. MCCLENDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 797.

No. 06–5665. RHODES *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–5667. NEWSOME *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 928 So. 2d 356.

No. 06–5668. HARRIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 167 Fed. Appx. 856.

No. 06–5670. DELONG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 210.

No. 06–5671. DILLARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 438 F. 3d 675.

No. 06–5672. CRAIG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5675. PATTERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 283.

No. 06–5677. CHAPMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5678. DIGGS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–5679. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 347.

No. 06–5681. JOHNSON *v.* GREENFIELD DISTRICT COURT ET AL. App. Ct. Mass. Certiorari denied. Reported below: 65 Mass. App. 1122, 843 N. E. 2d 1117.

No. 06–5682. ANDREWS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 262.

No. 06–5683. BRAMWELL *v.* FEDERAL PRISON INDUSTRIES. C. A. 4th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 365.

No. 06–5685. FRANCO *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 06–5694. FERGUSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 539.

No. 06–5696. BRETON-PICHARDO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 709.

No. 06–5702. DIVINE, AKA RIVERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 760.

No. 06–5704. HUNTER *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–5705. COULTHRUST *v.* GONZALES, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 177 Fed. Appx. 234.

No. 06–5706. PERRY *v.* DiGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 169 Fed. Appx. 134.

No. 06–5707. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 346.

No. 06–5709. RIVERA-RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5710. SPINKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 256.

No. 06–5711. RIVERE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 445.

No. 06–5712. CORNEJO TOVAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 733.

No. 06–5714. WOOD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 534.

No. 06–5715. ZIMMERMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 8.

No. 06–5717. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 441 F. 3d 716.

No. 06–5721. CLAUDILLO-MARQUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 165 Fed. Appx. 43.

No. 06–5722. EUBANKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 610.

No. 06–5723. DeCHICK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 181 Fed. Appx. 100.

No. 06–5726. LAUGHLIN *v.* CRAWFORD, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 430 F. 3d 927.

No. 06–5728. WILKIE ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 533.

No. 06–5730. BAUTISTA-PASCUAL, AKA LOPEZ-VELASCO *v.* UNITED STATES (Reported below: 178 Fed. Appx. 666); SANCHEZ-

TALANCON *v.* UNITED STATES (178 Fed. Appx. 669); ARELLANO-ARREDONDO *v.* UNITED STATES (191 Fed. Appx. 534); MARTINEZ-ZAMORA *v.* UNITED STATES (180 Fed. Appx. 697); CAMPOS-REYES *v.* UNITED STATES (189 Fed. Appx. 687); CASTREJON-ALVAREZ *v.* UNITED STATES (189 Fed. Appx. 677); INIGUEZ-SANTANA *v.* UNITED STATES (180 Fed. Appx. 698); and FIGUEROA-RADILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–5733. WEST *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 166 Md. App. 763.

No. 06–5734. CARABALLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 447 F. 3d 26.

No. 06–5735. YOUNG *v.* LUEBBERS, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–5736. JORDAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 500.

No. 06–5737. WRIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 180 Fed. Appx. 348.

No. 06–5738. MONGUIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 726.

No. 06–5740. REVELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 455 F. 3d 448.

No. 06–5744. CHURNET *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 899 A. 2d 138.

No. 06–5745. CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 732.

No. 06–5747. SWAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 187 Fed. Appx. 21.

No. 06–5748. LUTCHER ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 461.

No. 06–5750. LUNA-MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 647.

No. 06–5752. SAPPA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 724.

No. 06–5753. RINALDI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 447 F. 3d 192.

No. 06–5755. SHEPHERD *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 280 Ga. 245, 626 S. E. 2d 96.

No. 06–5759. MAJOR, AKA BONIOL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 431.

No. 06–5760. LOCKHEART *v.* HULICK, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 443 F. 3d 927.

No. 06–5762. WHITE *v.* APOLLO GROUP, INC., DBA UNIVERSITY OF PHOENIX, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 255.

No. 06–5764. THURSTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 06–5767. ZIADEH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 289.

No. 06–5770. GOMEZ-ABREU *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5772. ALBERT *v.* SCHWARTZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 106.

No. 06–5780. SALDIVAR-QUEZADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 775.

No. 06–5781. WATSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 663.

No. 06–5782. WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 443 F. 3d 582.

No. 06–5785. PIESCIUK *v.* OHIO (two judgments). Sup. Ct. Ohio. Certiorari denied.

No. 06–5786. LANDA-PALAFOX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 771.

No. 06–5789. SALAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 282.

No. 06–5793. IGLESIAS-RIOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5794. HANKINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 315.

No. 06–5795. HUGHES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 703.

No. 06–5798. GUERRIERI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 630.

No. 06–5800. CHAMPION *v.* CONNELL, SUPERINTENDENT, ONEIDA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–5801. CENSKE *v.* DEPARTMENT OF THE INTERIOR. C. A. Fed. Cir. Certiorari denied. Reported below: 181 Fed. Appx. 983.

No. 06–5802. DOLENZ *v.* MILES, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 475.

No. 06–5803. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 823.

No. 06–5805. PONE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–5806. HART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 256.

No. 06–5809. HUMMINGWAY *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 170 Fed. Appx. 142.

No. 06–5810. HUMMINGWAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 629.

No. 06–5811. REDD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 419.

No. 06–5812. LOYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 404.

No. 06–5815. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 619.

No. 06–5816. JIHAD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 Fed. Appx. 367.

No. 06–5820. SAVAGE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 180 Fed. Appx. 334.

No. 06–5821. HAMMOND *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 880 A. 2d 1066.

No. 06–5822. HOLUB *v.* PEARSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5827. WOODS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5830. DE ARMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 70.

No. 06–5833. CORNIEL-REYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 123.

No. 06–5836. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–5837. STONE *v.* O'BRIEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–5838. SUAREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 842.

No. 06–5840. MAYES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 331.

No. 06–5843. WASHINGTON *v.* GONZALES, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 06–5851. ACOSTA-FRANCO ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 447 F. 3d 715.

No. 06–5858. JEREMIAH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 644.

No. 06–5859. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 441 F. 3d 254.

No. 06–5860. BROWN *v.* UNITED STATES (Reported below: 181 Fed. Appx. 421); and GIPSON *v.* UNITED STATES (182 Fed. Appx. 340). C. A. 5th Cir. Certiorari denied.

No. 06–5861. ACOSTA-GALLEGOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 183.

No. 06–5866. CALCARI *v.* LAMPERT, DIRECTOR, WYOMING DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 704.

No. 06–5868. COURAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 867.

No. 06–5869. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 881.

No. 06–5870. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 870.

No. 06–5873. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 957.

No. 06–5875. MCKINNON *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 414.

No. 06–5879. CENNA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 448 F. 3d 1279.

No. 06–5885. KONTSAGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 831.

No. 06–5886. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 314.

No. 06–5892. BERNAL-SOTO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 847.

No. 06–5893. ATKINSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 656.

No. 06–5894. LEVERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5898. MADDEN *v.* HOLT, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 185 Fed. Appx. 197.

No. 06–5900. MARACALIN *v.* MORRISON, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 430.

No. 06–5901. KENDRICK *v.* OHIO. Sup. Ct. Ohio. Certiorari denied.

No. 06–5903. JONES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 920.

No. 06–5909. PATTERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 805.

No. 06–5910. MURPHY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 560.

No. 06–5911. MALDONADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 236.

No. 06–5915. VEASLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5917. CLYBURN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 343.

No. 06–5918. DURAZO, AKA GONZALEZ DURAZO *v.* UNITED STATES (Reported below: 185 Fed. Appx. 328); REGALADO-GARCIA *v.* UNITED STATES (185 Fed. Appx. 411); and ROMERO GUEVARA *v.* UNITED STATES (186 Fed. Appx. 490). C. A. 5th Cir. Certiorari denied.

No. 06–5925. SKILLERN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–5926. STATEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 181 Fed. Appx. 151.

No. 06–5928. WALKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 447 F. 3d 999.

No. 06–5929. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 445 F. 3d 724.

No. 06–5930. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 805.

No. 06–5931. ALEXANDER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 447 F. 3d 1290.

No. 06–5932. ANAYA-VALDEZ *v.* UNITED STATES (Reported below: 192 Fed. Appx. 268); CABRERA-NINO *v.* UNITED STATES (185 Fed. Appx. 380); BERNABE-DIAZ *v.* UNITED STATES (190 Fed. Appx. 345); DURAN-DE GARCIA *v.* UNITED STATES (182 Fed. Appx. 386); HERNANDEZ-HERNANDEZ, AKA SANCHEZ-PINEDA,

aka Soto Perez, aka Soto-Velasquez, aka Hernandez-Torres, aka Vasquez-Flores, aka Vasquez-Torres *v.* United States (190 Fed. Appx. 377); Juarez-Sanchez, aka Sanchez-Juarez *v.* United States (186 Fed. Appx. 499); Martinez-Orellana, aka Martinez-Trejo *v.* United States (190 Fed. Appx. 387); Miranda-Solis *v.* United States (182 Fed. Appx. 387); Ordones-Ferruzca, aka Ornelas-Garcia *v.* United States (185 Fed. Appx. 375); Reza-Alvares *v.* United States; Rodriguez-Cuellar *v.* United States (185 Fed. Appx. 385); Sanchez-Rodriguez *v.* United States (181 Fed. Appx. 488); Zuniga-Enriquez, aka Ornelas-Garcia *v.* United States (186 Fed. Appx. 491); Cortez *v.* United States (181 Fed. Appx. 492); Vasquez-Vasquez, aka Vazquez-Alvarez, aka Alvarez-Vazquez *v.* United States (182 Fed. Appx. 386); and Sanchez-Ruedas *v.* United States (452 F. 3d 409). C. A. 5th Cir. Certiorari denied.

No. 06–5933. Aguilera-Arriaga, aka Perez *v.* United States (Reported below: 186 Fed. Appx. 446); Aranda-De La Cruz *v.* United States (185 Fed. Appx. 390); Gomez-Vasquez *v.* United States (185 Fed. Appx. 389); Martinez-Diaz *v.* United States (185 Fed. Appx. 392); and Barajas-Madrigal, aka Barrajas, aka Madrigal Barajas, aka Barajas *v.* United States (186 Fed. Appx. 451). C. A. 5th Cir. Certiorari denied.

No. 06–5937. Brenton *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 747.

No. 06–5938. Veshio *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 174 Fed. Appx. 63.

No. 06–5940. English *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 06–5942. Wagner *v.* Wainstein. C. A. D. C. Cir. Certiorari denied.

No. 06–5943. Daniel *v.* Morgan, Warden, et al. C. A. 6th Cir. Certiorari denied.

No. 06–5946. Melvin *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 865.

No. 06–5947. Pulley *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 973.

No. 06–5948. PRADO-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 530.

No. 06–5950. TINDALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 614.

No. 06–5951. VAN DUC VO *v.* BENOV, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 447 F. 3d 1235.

No. 06–5954. ROBINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 352.

No. 06–5956. ROSAS SANTOYO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 617.

No. 06–5958. MACKEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5962. TWITTY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5963. GOODLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 419.

No. 06–5964. FOSTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 443 F. 3d 978.

No. 06–5965. HODGE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5966. GARCIA-CAVAZOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 381.

No. 06–5967. GARCIA-BELTRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 443 F. 3d 1126.

No. 06–5972. PICKARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 170 Fed. Appx. 243.

No. 06–5973. PAYANO-ROMAN *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 290 Wis. 2d 380, 714 N. W. 2d 548.

No. 06–5974. MOSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 444.

No. 06–5975. REED *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 784.

No. 06–5977. BERAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 131 Fed. Appx. 313.

No. 06–5978. WILLIAMSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–5980. SHITIAN WU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 183 Fed. Appx. 34.

No. 06–5983. VALENCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–5984. WALLACE *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–5987. LLOYD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 181 Fed. Appx. 216.

No. 06–5988. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 586.

No. 06–5991. SANCHEZ-PIMENTEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 726.

No. 06–5993. MICHALSKI *v.* POOLE, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 23 App. Div. 3d 1161, 804 N. Y. S. 2d 283.

No. 06–5997. ALVARADO, AKA ARIAS-ALVARADO, AKA ARIAS *v.* UNITED STATES (Reported below: 191 Fed. Appx. 556); CASTANEDA-LOPEZ *v.* UNITED STATES (181 Fed. Appx. 702); MARTINEZ-LUNA *v.* UNITED STATES (180 Fed. Appx. 766); CUEVAS-MALDONADO, AKA CUEVAS, ET AL. *v.* UNITED STATES; and HERNANDEZ, AKA LOPEZ *v.* UNITED STATES (180 Fed. Appx. 767). C. A. 9th Cir. Certiorari denied.

No. 06–5998. ALVAREZ-ENCISO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 181 Fed. Appx. 8.

No. 06–6004. MORA-ISABELLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 555.

No. 06–6006. PREVENSLIK *v.* PATENT AND TRADEMARK OFFICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 197.

No. 06–6008. CLARK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 540.

No. 06–6009. ENCARNACION-MORILLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–6010. DUNLAP *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 636.

No. 06–6011. DUNN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 680.

No. 06–6012. TALLINI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6017. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 657.

No. 06–6019. KIRK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6022. MACK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 422.

No. 06–6024. WINKELMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 180 Fed. Appx. 397.

No. 06–6025. VALADEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 508.

No. 06–6029. MONTESINOS-MONTIEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 599.

No. 06–6030. KING *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 184 Fed. Appx. 3.

No. 06–6032. ALFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 436 F. 3d 677.

No. 06–6034. BRYANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 884.

No. 06–6038. NELSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 450 F. 3d 1201.

No. 06–6039. OWENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 253.

No. 06–6044. LINARES HERNANDEZ *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 06–6045. PHOENIX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 322.

No. 06–6049. CORRALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 843.

No. 06–6050. TAYLOR *v.* CROUSE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 448 F. 3d 942.

No. 06–6051. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 554.

No. 06–6056. EL-AMIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 942.

No. 06–6057. SHELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 448 F. 3d 951.

No. 06–6058. GRIFFIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 187 Fed. Appx. 13.

No. 06–6061. BECKFORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 176 Fed. Appx. 299.

No. 06–6062. ALEGRIA-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 462.

No. 06–6068. FUENTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 761.

No. 06–6070. LINDER, AKA PETERSON, ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 174.

No. 06–6072. VERA-DIAZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–6073. ESPINOZA-NARANJO, AKA GONZALES, AKA GONZALEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 610.

No. 06–6076. HARTWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 448 F. 3d 707.

No. 06–6077. HARMON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 117.

No. 06–6080. LYNCH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 416.

No. 06–6081. BAO LU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 390.

No. 06–6082. VASILIADES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–6084. BROADWATER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–6085. AYEKI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 193 Fed. Appx. 82.

No. 06–6087. BARNES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 526.

No. 06–6099. TORRES-GONZALES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–6100. GONZALEZ-BRISO, AKA ALVARADO-ANDRADE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 355.

No. 06–6101. PEARSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 181 Fed. Appx. 192.

No. 06–6102. PERKINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 449 F. 3d 794.

No. 06–6103. SON VAN NGUYEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 390.

No. 06–6106. LITTRELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 439 F. 3d 875.

No. 06–6108. CANCHOLA-ESPINOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 653.

No. 06–6113. RAFIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6115. LOPEZ-GUZMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 732.

No. 06–6116. BENTLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6118. THOMPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 181 Fed. Appx. 246.

No. 06–6119. BRIDGEFORTH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–6121. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 338.

No. 06–6122. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–6123. MILLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 250.

No. 06–6124. MELENDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–6125. NUNEZ-HERNANDEZ, AKA NUNEZ, AKA ACOSTA, AKA RONDON-ARADIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 174 Fed. Appx. 79.

No. 06–6126. MONDRAGON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–6127. WATKINS *v.* HOLT, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 177 Fed. Appx. 251.

No. 06–6128. KOSH *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 184 Fed. Appx. 4.

No. 06–6129. LAZENBY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 902 A. 2d 828.

No. 06–6131. WITT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 406.

No. 06–6133. SANTIAGO-LUGO *v.* TAPIA, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 296.

No. 06–6135. MOSES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–6136. DAHN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 206.

No. 06–6139. HART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 192 Fed. Appx. 90.

No. 06–6142. MCLAUGHLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 802.

No. 06–6143. ADAM *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 905 A. 2d 804.

No. 06–6152. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 334.

No. 06–6156. COSME-PIRI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 449 F. 3d 61.

No. 06–6164. DOWD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 451 F. 3d 1244.

No. 06–6165. SALES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 230.

No. 06–6170. NYHUIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6171. SPAHIU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 179 Fed. Appx. 791.

No. 05–1269. EXIDE TECHNOLOGIES, FKA EXIDE CORP. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 423 F. 3d 294.

No. 05–1286. OKLAHOMA *v.* PICKENS (Reported below: 126 P. 3d 612); OKLAHOMA *v.* SALAZAR (126 P. 3d 625); and OKLAHOMA *v.* LAMBERT (126 P. 3d 646). Ct. Crim. App. Okla. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 05–1311. CITIZENS FOR HEALTH ET AL. *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 428 F. 3d 167.

No. 05–1378. ALABAMA *v.* COLLINS. Ct. Crim. App. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 937 So. 2d 86.

No. 05–1386. SEMIEN *v.* LIFE INSURANCE COMPANY OF NORTH AMERICA ET AL. C. A. 7th Cir. Motion of AARP for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 436 F. 3d 805.

No. 05–1398. NEXBANK, SSB, ET AL. *v.* AMERICAN HOME-PATIENT, INC., ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 420 F. 3d 559.

No. 05–1404. GALLENTHIN REALTY DEVELOPMENT, INC., ET AL. *v.* BP PRODUCTS OF NORTH AMERICA, INC., DBA BP OIL CO., ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 163 Fed. Appx. 146.

No. 05–1465. UNITED HEALTHCARE OF OHIO, INC. *v.* ACADEMY OF MEDICINE OF CINCINNATI ET AL. Sup. Ct. Ohio. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 108 Ohio St. 3d 185, 842 N. E. 2d 488.

No. 05–1466. UNITED HEALTHCARE OF OHIO, INC. *v.* NORTHERN KENTUCKY MEDICAL SOCIETY ET AL. Ct. App. Ky. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition.

No. 05–1486. RICHARD, EXECUTRIX OF THE ESTATE OF RAY *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 160 Fed. Appx. 203.

No. 05–1501. KORESKO ET AL. *v.* CHAO, SECRETARY OF LABOR. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 05–1505. ALLRED ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY, ET AL. Ct. App. Cal., 1st App. Dist. Motion of respondent Scott Edgar Dyleski for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 05–1539. EKLUND ET AL. *v.* BYRON UNION SCHOOL DISTRICT ET AL. C. A. 9th Cir. Motion of American Catholic Lawyers Association, Inc., for leave to file a brief as *amicus curiae*

granted. Certiorari denied. Reported below: 154 Fed. Appx. 648.

No. 05–1543. TRUMBALL INVESTMENTS LIMITED I ET AL. *v.* WACHOVIA BANK, N. A., FKA FIRST UNION NATIONAL BANK. C. A. 4th Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 436 F. 3d 443.

No. 05–1547. SIMS ET AL. *v.* OHIO CASUALTY INSURANCE CO. ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 151 Fed. Appx. 433.

No. 05–1568. QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION *v.* GRAVES. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 442 F. 3d 334.

No. 05–1580. OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS *v.* NANCE. Sup. Ct. S. C. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 367 S. C. 547, 626 S. E. 2d 878.

No. 05–1587. ARKANSAS *v.* CARTER. Sup. Ct. Ark. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 365 Ark. 224, 227 S. W. 3d 895.

No. 05–1618. JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS *v.* WILSON. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 430 F. 3d 1113.

No. 05–1634. DIEFFENBACH *v.* INTERNATIONAL REHABILITATION ASSOCIATES, DBA INTRACORP. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 150 Fed. Appx. 178.

No. 05–9816. BRISBANE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 05–9989. HOFFENBERG *v.* PROVOST ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consider-

ation or decision of this petition. Reported below: 154 Fed. Appx. 307.

No. 05–10494. DeLuca *v.* Katchmeric. Sup. Ct. Va. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [548 U. S. 902] denied. Certiorari denied.

No. 05–10758. Cady *v.* South Suburban College et al. C. A. 7th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 152 Fed. Appx. 531.

No. 05–10794. Jones *v.* Falor et al. C. A. 3d Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 135 Fed. Appx. 554.

No. 05–10866. Tyree *v.* United States District Court for the District of Massachusetts. C. A. 1st Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 05–10874. Sweatmon *v.* Jones et al. Ct. Sp. App. Md. Certiorari denied. Justice Breyer took no part in the consideration or decision of this petition. Reported below: 390 Md. App. 286, 888 A. 2d 343.

No. 05–10875. Nottingham *v.* Deiter, Judge, Superior Court of Indiana, Marion County; Nottingham *v.* Babcock et al.; Nottingham *v.* United States Court of Appeals for the Seventh Circuit et al.; Nottingham *v.* Indiana; and Nottingham *v.* Superior Court of Indiana, Marion County, et al. C. A. 7th Cir. Certiorari denied. Justice Breyer took no part in the consideration or decision of this petition.

No. 05–10931. Allen *v.* Rozum, Superintendent, State Correctional Institution at Somerset, et al. C. A. 3d Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 148 Fed. Appx. 90.

No. 05–10985. Williams *v.* Cintas Corp. et al. C. A. 5th Cir. Certiorari denied. Justice Breyer took no part in the consideration or decision of this petition. Reported below: 169 Fed. Appx. 180.

No. 05–11000. MICHAELESCO *v.* SHEFTS ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 05–11230. JOHNSON *v.* QUANDER ET AL. C. A. D. C. Cir. Motion of Protection and Advocacy, Inc., for leave to file a brief as *amicus curiae* out of time denied. Certiorari denied. Reported below: 440 F. 3d 489.

No. 05–11317. HARTWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 436 F. 3d 174.

No. 05–11331. SHIH-LING CHEN *v.* ROCHFORD, SHERIFF, MORRIS COUNTY, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 145 Fed. Appx. 723.

No. 05–11363. A. H. *v.* SOUTH ORANGE MAPLEWOOD BOARD OF EDUCATION. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 153 Fed. Appx. 863.

No. 05–11397. NEUHAUSSER *v.* UNITED STATES. C. A. 6th Cir. Motion of Law Offices of Robert A. Ratliff for leave to file a brief as *amicus curiae* out of time denied. Certiorari denied.

No. 05–11411. COOK *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 174 Fed. Appx. 736.

No. 05–11504. GEORGESON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 173 Fed. Appx. 623.

No. 05–11558. SWEATMON *v.* WELLS FARGO BANK ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 05–11731. AWAN *v.* GONZALES, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 144 Fed. Appx. 956.

No. 05–11832. HINES *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 05–11836. GORKO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 169 Fed. Appx. 745.

No. 06–17. BROOKS-MCCOLLUM *v.* EMERALD RIDGE SERVICE CORPORATION BOARD OF DIRECTORS ET AL. C. A. 3d Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 166 Fed. Appx. 618.

No. 06–38. DETROIT ENTERTAINMENT, L. L. C., DBA MOTOR-CITY CASINO, ET AL. *v.* ROMANSKI. C. A. 6th Cir. Motion of Greektown Casino, LLC, et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 428 F. 3d 629.

No. 06–88. BAYER CORP. ET AL. *v.* ANDERSON ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 171 Fed. Appx. 18.

No. 06–94. FULLER-AUSTIN INSULATION CO. *v.* HIGHLANDS INSURANCE CO. ET AL. Ct. App. Cal., 2d App. Dist. Motion of Consumer Federation of America et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 135 Cal. App. 4th 958, 38 Cal. Rptr. 3d 716.

No. 06–103. ROBINSON *v.* SUNBEAM CORP. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 178 Fed. Appx. 73.

No. 06–146. WARE *v.* FLEETBOSTON FINANCIAL CORP., FKA BANKBOSTON CORP. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 180 Fed. Appx. 59.

No. 06–180. RATIONIS ENTERPRISES INC. OF PANAMA ET AL. *v.* HYUNDAI MIPO DOCKYARD CO., LTD., ET AL. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE BREYER

took no part in the consideration or decision of this petition. Reported below: 426 F. 3d 580.

No. 06–5042. HOLLIS-ARRINGTON *v.* PHH MORTGAGE CORP. ET AL. C. A. 3d Cir. Certiorari before judgment denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 06–5046. SATTERFIELD *v.* JOHNSON ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 434 F. 3d 185.

No. 06–5372. WISHNEFSKY *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 06–5506. CUNNINGHAM *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

Rehearing Denied

No. 05–1440. HENDERSON *v.* OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION ET AL., 548 U. S. 907;

No. 05–5292. IN RE HENSON, 546 U. S. 810;

No. 05–10139. ANTHONY *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, 547 U. S. 1181;

No. 05–10307. BANDA *v.* NEW JERSEY SPECIAL TREATMENT UNIT ANNEX ET AL., 547 U. S. 1183;

No. 05–10548. ESTACIO *v.* OREGON DEPARTMENT OF CORRECTIONS ET AL., 548 U. S. 911;

No. 05–10574. PORTALES *v.* MADIGAN, ATTORNEY GENERAL OF ILLINOIS, 548 U. S. 911; and

No. 05–10704. LEWIS *v.* GRAMS, WARDEN, 547 U. S. 1197. Petitions for rehearing denied.

No. 05–10138. DRUITT *v.* COLLEGE OF WILLIAM AND MARY ET AL., 547 U. S. 1181; and

No. 05–10895. DAVIS *v.* UNITED STATES, 547 U. S. 1212. Motions for leave to file petitions for rehearing denied.

OCTOBER 6, 2006

Miscellaneous Order

No. 05–746. NORFOLK SOUTHERN RAILWAY CO. *v.* SORRELL. Ct. App. Mo., Eastern Dist. [Certiorari granted, 547 U. S. 1127.]

Motion of American Train Dispatchers Association et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

Certiorari Granted

No. 05–1429. TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA *v.* PACIFIC GAS & ELECTRIC CO. C. A. 9th Cir. Certiorari granted. Reported below: 167 Fed. Appx. 593.

No. 05–11304. SMITH *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 185 S. W. 3d 455.

OCTOBER 10, 2006

Dismissal Under Rule 46

No. 05–1476. MCENOUGH-WATSON *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 156 Fed. Appx. 293.

Certiorari Dismissed

No. 06–5680. COLIDA *v.* MASTERS. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–5791. MINNIECHESKE *v.* VILLAGE OF TIGERTON, WISCONSIN (two judgments). Ct. App. Wis. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2427. IN RE DISBARMENT OF TELESFORD. Disbarment entered. [For earlier order herein, see 548 U. S. 929.]

No. D–2430. IN RE DISBARMENT OF KESSLER. Disbarment entered. [For earlier order herein, see 548 U. S. 929.]

No. D–2432. IN RE DISBARMENT OF ROTHENBERG. Disbarment entered. [For earlier order herein, see 548 U. S. 929.]

No. D–2434. IN RE BARRETT. David A Barrett, of Tallahassee, Fla., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll

of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on July 31, 2006 [548 U. S. 930], is discharged.

No. D–2437. IN RE DISBARMENT OF REICH. Disbarment entered. [For earlier order herein, see 548 U. S. 930.]

No. D–2438. IN RE DISBARMENT OF FULLER. Disbarment entered. [For earlier order herein, see 548 U. S. 930.]

No. D–2441. IN RE DISCIPLINE OF BOZELKO. Ronald F. Bozelko, of Orange, Conn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2442. IN RE DISCIPLINE OF AMBROSE. Fred John Ambrose, Jr., of Long Beach, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2443. IN RE DISCIPLINE OF BESWICK. Ronald H. Beswick, of Beverly Hills, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2444. IN RE DISCIPLINE OF FLEMING. Clarence Edwin Fleming, of Pasadena, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2445. IN RE DISCIPLINE OF KAUFMAN. Jack H. Kaufman, Jr., of San Clemente, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2446. IN RE DISCIPLINE OF KRONENBERG. Donald Bruce Kronenberg, of Seattle, Wash., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2447. IN RE DISCIPLINE OF SUCKLING. John Robert Suckling, of San Diego, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2448. IN RE DISCIPLINE OF WHALLEY. Lester F. Whalley, of Yorba Linda, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 06M25. ROBINSON *v.* FREEDOM FAITH MISSIONARY BAPTIST CHURCH ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 06M26. WIMMER *v.* HEWLETT-PACKARD CO. Motion to direct the Clerk to file petition for writ of certiorari out of time denied. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 06M27. BELLANICH *v.* DOE;

No. 06M28. BAUMGARTEN *v.* NEW YORK DEPARTMENT OF PROTECTIVE SERVICES ET AL.;

No. 06M29. WHITE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; and

No. 06M30. DAGO *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 134, Orig. NEW JERSEY *v.* DELAWARE. Motion of the Special Master for allowance of fees and disbursements granted, and the Special Master is awarded a total of $65,532.12 for the period January 23 through August 31, 2006, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 546 U. S. 1147.]

No. 05–380. GONZALES, ATTORNEY GENERAL *v.* CARHART ET AL. C. A. 8th Cir. [Certiorari granted, 546 U. S. 1169.] Motions of Religious Coalition for Reproductive Choice et al., Institute for Reproductive Health Access et al., National Women's Law Center et al., Former Federal Prosecutors, and 52 Members of the United States Congress for leave to file briefs as *amici curiae* out of time granted.

No. 05–996. MARRAMA *v.* CITIZENS BANK OF MASSACHUSETTS ET AL. C. A. 1st Cir. [Certiorari granted, 547 U. S. 1191.] Motion of National Association of Consumer Bankruptcy Attorneys for leave to participate in oral argument as *amicus curiae* and for divided argument denied. Motion of respondents for divided argument denied. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–5976. SCHECKEL *v.* IOWA DEPARTMENT OF REVENUE AND FINANCE. Ct. App. Iowa. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 31, 2006, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 06–6278. IN RE INTROCASO;
No. 06–6311. IN RE VASQUEZ; and
No. 06–6525. IN RE DAVIS. Petitions for writs of habeas corpus denied.

No. 06–126. IN RE GALLOWAY;
No. 06–175. IN RE GONZALEZ;
No. 06–206. IN RE OLIPHANT;
No. 06–262. IN RE FULTON;
No. 06–275. IN RE TROXLER; and
No. 06–5647. IN RE SAMUELS. Petitions for writs of mandamus denied.

No. 06–5813. IN RE ATAMIAN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

No. 06–5823. IN RE GREEN. Petition for writ of prohibition denied.

Certiorari Denied

No. 05–1343. KING ET AL. *v.* GRAND RIVER ENTERPRISES SIX NATIONS, LTD., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 3d 158.

No. 05–1363. W. R. GRACE & CO. ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 429 F. 3d 1224.

No. 05–1384. SHEFCHUK, EXECUTRIX OF THE ESTATE OF SHEFCHUK *v.* ILLINOIS UNION INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 108 Fed. Appx. 294.

No. 05–1519. ZAMORA-GARCIA *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 397.

No. 05–1524. OCHOA-VASQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 428 F. 3d 1015.

No. 05–1567. OCHOA-CARRILLO *v.* GONZALES, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 446 F. 3d 781.

No. 05–1572. BAZZETTA ET AL. *v.* CARUSO, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 430 F. 3d 795.

No. 05–1614. MEANS *v.* NATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 432 F. 3d 924.

No. 05–1656. BROWN *v.* PARKER DRILLING OFFSHORE CORP. C. A. 5th Cir. Certiorari denied. Reported below: 410 F. 3d 166.

No. 05–1663. KUZMA ET UX. *v.* CITY OF FORT MYERS, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 911.

No. 05–10404. CALLAHAN *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 427 F. 3d 897.

No. 05–10687. PULLIAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 405 F. 3d 782.

No. 05–11057. UNVERZAGT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 886.

No. 05–11228. SOWEWIMO *v.* UCHTMAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–11234. ABDUS-SAMAD, FKA BOYD *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 420 F. 3d 614.

No. 05–11325. MARTINEZ LEDESMA *v.* UNITED STATES;
No. 05–11409. CASTRO PORTOCARRERO *v.* UNITED STATES; and

No. 06–5584. HOYOS, AKA JARAMILLO MOYOS, AKA MOYOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 565.

No. 05–11356. ROBINSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 37 Cal. 4th 592, 124 P. 3d 363.

No. 05–11698. BOBADILLA *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 709 N. W. 2d 243.

No. 05–11822. JOHNSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 446 F. 3d 272.

No. 06–1. AVERILL PARK CENTRAL SCHOOL DISTRICT ET AL. *v.* CIOFFI. C. A. 2d Cir. Certiorari denied. Reported below: 444 F. 3d 158.

No. 06–36. PUBLIC AGENCY COMPENSATION TRUST *v.* PERRY ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 121 Nev. 1162, 152 P. 3d 798.

No. 06–120. SOUZA ET AL. *v.* WESTLANDS WATER DISTRICT ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 135 Cal. App. 4th 879, 38 Cal. Rptr. 3d 78.

No. 06–127. FREEEATS.COM, INC. *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 712 N. W. 2d 828.

No. 06–131. NICHOLAS ET AL. *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 430 F. 3d 652.

No. 06–136. GRUBBS *v.* BAILES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 445 F. 3d 1275.

No. 06–147. AT HOME CORP. *v.* COX COMMUNICATIONS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 446 F. 3d 403.

No. 06–150. SPOONER *v.* CITY OF GROVER BEACH, CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–154. SABO *v.* CANTERBURY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 265.

No. 06–156. ROPER-SIMPSON *v.* SCHECK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 163 Fed. Appx. 70.

No. 06–163. CITY OF NEW YORK, NEW YORK, ET AL. *v.* FIFTH AVENUE PRESBYTERIAN CHURCH ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 177 Fed. Appx. 198.

No. 06–169. MCDONNELL *v.* CARDIOTHORACIC & VASCULAR SURGICAL ASSOCIATES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 423.

No. 06–174. BROWN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–177. RODRIGUEZ *v.* DEVIS PEREIRA. C. A. 4th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 227.

No. 06–182. BENNETT *v.* BENNETT ET AL. Ct. App. Colo. Certiorari denied.

No. 06–183. ESTATE OF COSIO ET AL. *v.* ALVAREZ ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 894.

No. 06–185. COTTRILL ET AL. *v.* MFA, INC., DBA MFA AGRI-SERVICES, INC. C. A. 8th Cir. Certiorari denied. Reported below: 443 F. 3d 629.

No. 06–188. NELSON, NKA MARSH *v.* NELSON. Ct. App. Kan. Certiorari denied. Reported below: 34 Kan. App. 2d 879, 125 P. 3d 1081.

No. 06–189. POLITO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 888 A. 2d 10.

No. 06–194. WONG *v.* WONG. Int. Ct. App. Haw. Certiorari denied. Reported below: 108 Haw. 471, 121 P. 3d 936.

No. 06–198. JACOB ET AL. *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied.

No. 06–204. BIANCHI *v.* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, AND WAREHOUSEMEN, LOCAL 390, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 441 F. 3d 1278.

No. 06–229. JURY SERVICE RESOURCE CENTER ET AL. *v.* OREGON ET AL. Ct. App. Ore. Certiorari denied. Reported below: 199 Ore. App. 106, 110 P. 3d 594.

No. 06–235. CITY OF GETTYSBURG, SOUTH DAKOTA *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 173 Fed. Appx. 827.

No. 06–243. WASHINGTON SAVANNAH RIVER CO. *v.* HOLLINGSWORTH. Super. Ct. Pa. Certiorari denied. Reported below: 876 A. 2d 474.

No. 06–258. CUNNINGHAM *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 934.

No. 06–261. FULTON *v.* BOARD OF PROFESSIONAL RESPONSIBILITY, WYOMING STATE BAR. Sup. Ct. Wyo. Certiorari denied. Reported below: 133 P. 3d 514.

No. 06–264. FAN *v.* NAG ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–269. UNITED DISPOSAL OF BRADLEY, INC., ET AL. *v.* ILLINOIS POLLUTION CONTROL BOARD ET AL. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 363 Ill. App. 3d 243, 842 N. E. 2d 1161.

No. 06–270. ADKINS *v.* GENERAL MOTORS CORP. C. A. 2d Cir. Certiorari denied. Reported below: 170 Fed. Appx. 184.

No. 06–272. VAUGHN, AS ADMINISTRATRIX OF THE ESTATE OF MCLEMORE *v.* CITY OF ATHENS, ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 974.

No. 06–279. KWASNIK *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES OF THE STATE OF MAINE ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 893 A. 2d 610.

No. 06–289. PIPOLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–293. BROWN, JOINT TENANT TRUSTEE *v.* MONTGOMERY COUNTY TAX CLAIM BUREAU. C. A. 3d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 191.

No. 06–295. PISMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 443 F. 3d 912.

No. 06–297. LUCAS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 63 M. J. 295.

No. 06–301. MANDYCZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 447 F. 3d 951.

No. 06–316. WOODARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 443 F. 3d 661.

No. 06–319. FERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 184 Fed. Appx. 83.

No. 06–330. WELIVER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 177 Fed. Appx. 84.

No. 06–339. KATZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 445 F. 3d 1023.

No. 06–354. LANGER ET VIR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 759.

No. 06–5059. CHANDLER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 916 So. 2d 728.

No. 06–5080. GRANDISON *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 390 Md. 412, 889 A. 2d 366.

No. 06–5090. RIVERA-DIAZ ET AL. *v.* AMERICAN AIRLINES, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 433 F. 3d 120.

No. 06–5149. JOHNSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 442 F. 3d 901.

No. 06–5162. JURADO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 38 Cal. 4th 72, 131 P. 3d 400.

No. 06–5588. MANSFIELD *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 187 S. W. 3d 1.

No. 06–5589. JACOBS *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 904 So. 2d 82.

No. 06–5598. GIVENS *v.* CHANOS, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 771.

No. 06–5599. HAMILTON *v.* FLORIDA ET AL. (two judgments). Sup. Ct. Fla. Certiorari denied. Reported below: 932 So. 2d 192 (both judgments).

No. 06–5600. ROUX *v.* SOUTHWESTERN BELL YELLOW PAGES, INC., SBC. C. A. 8th Cir. Certiorari denied. Reported below: 157 Fed. Appx. 954.

No. 06–5602. JEFFERSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 189 S. W. 3d 305.

No. 06–5610. PINA *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 674.

No. 06–5613. DEAN *v.* HORNUNG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 548.

No. 06–5620. THATCHER *v.* ROMANOWSKI, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–5625. JAMES *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied.

No. 06–5626. MCCORMICK *v.* BRAVERMAN. Ct. App. Mich. Certiorari denied.

No. 06–5630. VELISHKA *v.* T. N. T. HOME BUILDERS ET AL. Sup. Jud. Ct. Me. Certiorari denied.

No. 06–5636. HAND *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 107 Ohio St. 3d 378, 840 N. E. 2d 151.

No. 06–5638. KANDEKORE *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 932 So. 2d 1005.

No. 06–5640. STEPHENS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5641. SIMMONS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–5643. SOLANO *v.* MITCHELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5644. SAMUEL *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 06–5646. ROGER *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 931 So. 2d 1031.

No. 06–5648. SIMMONS *v.* PATRICK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–5657. HILTON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 25 App. Div. 3d 505, 810 N. Y. S. 2d 19.

No. 06–5658. FRIZE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–5660. ALLEN *v.* BECK, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 548.

No. 06–5666. RHODES *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 06–5669. HUDSON *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–5676. EPPERSON *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 901 A. 2d 119.

No. 06–5684. BEAMON *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–5688. GIDDENS *v.* DUFFEY, JUDGE, SUPERIOR COURT OF GEORGIA, CARROLL COUNTY, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5692. STEWART *v.* OHIO EMPLOYMENT RELATIONS BOARD. Sup. Ct. Ohio. Certiorari denied. Reported below: 108 Ohio St. 3d 203, 842 N. E. 2d 505.

No. 06–5693. AMES *v.* HOWTON, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 06–5695. WOODS *v.* MCBRIDE, SUPERINTENDENT, MAXIMUM CONTROL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 430 F. 3d 813.

No. 06–5697. YEKIMOFF *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 06–5699. SHULTS *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 332 Mont. 130, 136 P. 3d 507.

No. 06–5700. ROWSEY *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 536.

No. 06–5701. ROLLINS *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 392 Md. 455, 897 A. 2d 821.

No. 06–5713. MOYER *v.* MILLER, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 06–5716. MORRIS *v.* THOMPSON, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT SHIRLEY. C. A. 1st Cir. Certiorari denied.

No. 06–5718. LEE *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–5720. SKIPPER *v.* OLLIS. C. A. 6th Cir. Certiorari denied.

No. 06–5724. MAKIDON *v.* METRISH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–5725. JENKINS *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–5732. ANDREWS *v.* DOUGLAS COUNTY, NEBRASKA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 353.

No. 06–5741. SAYLES *v.* FARWELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 688.

No. 06–5742. SMELT ET AL. *v.* ORANGE COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 447 F. 3d 673.

No. 06–5746. CONWAY *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 06–5751. REDDITT *v.* WADE. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 305.

No. 06–5756. McNeill *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 360 N. C. 231, 624 S. E. 2d 329.

No. 06–5761. Lair *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 06–5765. Walls *v.* McDonough, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 06–5768. Wells *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 06–5769. Beaver *v.* Ohio. Ct. App. Ohio, Marion County. Certiorari denied.

No. 06–5771. Brock *v.* McDaniel, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 900.

No. 06–5773. Barber *v.* Caden, Associate Warden. C. A. 9th Cir. Certiorari denied.

No. 06–5774. Bowers *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 06–5776. Juniper *v.* Virginia. Sup. Ct. Va. Certiorari denied. Reported below: 271 Va. 362, 626 S. E. 2d 383.

No. 06–5777. Lane *v.* Local Union 2–286. C. A. 3d Cir. Certiorari denied. Reported below: 169 Fed. Appx. 693.

No. 06–5778. Scott *v.* Walkin et al. C. A. 10th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 822.

No. 06–5779. Ramirez *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 06–5783. McDaniels *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 886 A. 2d 682.

No. 06–5784. Aguirre *v.* Sullivan, Warden. C. A. 9th Cir. Certiorari denied.

No. 06–5787. DUQUETTE *v.* CATTELL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 06–5790. STRINGER *v.* DANIELS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 350.

No. 06–5792. CARVAJAL *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 06–5796. HILCHEY *v.* HILCHEY. Sup. Ct. N. H. Certiorari denied.

No. 06–5797. FINK *v.* CALIFORNIA STATE UNIVERSITY NORTHRIDGE ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–5799. ENCALADE *v.* STACKS ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–5804. PRINCE *v.* OHIO. Ct. App. Ohio, Warren County. Certiorari denied.

No. 06–5807. GRANT *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 155 Fed. Appx. 551.

No. 06–5814. ALVAREZ ACUNA *v.* JONES, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. Ct. App. Ariz. Certiorari denied.

No. 06–5824. GONZALEZ *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1243, —— N. E. 2d ——.

No. 06–5825. GILES *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 928 So. 2d 355.

No. 06–5826. HEUSS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 926 So. 2d 1288.

No. 06–5828. WIEDBRAUK *v.* METRISH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 993.

No. 06–5829. VINCENT *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–5831. DAVIS *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–5832. CLIFFORD *v.* REDMANN, WARDEN. Sup. Ct. N. D. Certiorari denied. Reported below: 719 N. W. 2d 384.

No. 06–5835. SCHWINDLER *v.* THOMPSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5839. SCHOFIELD *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 914 So. 2d 990.

No. 06–5841. MYERS *v.* CASTOR, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 663.

No. 06–5842. THOMAS *v.* WORTHINGTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–5844. RAMIREZ *v.* CARTER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 415.

No. 06–5848. QUICK *v.* MANN. C. A. 10th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 588.

No. 06–5849. SIMON *v.* MANN. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 1728, 178 P. 3d 803.

No. 06–5850. BYNUM *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 929 So. 2d 312.

No. 06–5855. SANTIAGO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 883 A. 2d 694.

No. 06–5857. VUONG *v.* MANAGEMENT OF J. C. PENNEY'S CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 169 Fed. Appx. 675.

No. 06–5867. DOMINGUEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 06–5871. DAVIS *v.* REVELL. C. A. 7th Cir. Certiorari denied.

No. 06–5880. WILKENS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 267 Mich. App. 728, 705 N. W. 2d 728.

No. 06–5884. JONES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 132 P. 3d 1.

No. 06–5889. ENGLERIUS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 769.

No. 06–5912. KALMAKOFF *v.* ALASKA. Ct. App. Alaska. Certiorari denied. Reported below: 122 P. 3d 224.

No. 06–5914. JEFFUS *v.* RAY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5922. JOHNSON *v.* BAZZLE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 306.

No. 06–5934. ARMEL *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 544.

No. 06–5935. BARKLEY *v.* VAUGHN, SUPERINTENDENT, ODOM CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 308.

No. 06–5944. WASHINGTON *v.* JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 789.

No. 06–5979. MCKNIGHT *v.* VAUGHAN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 180.

No. 06–5981. WILSON *v.* MARSHBURN. Ct. Sp. App. Md. Certiorari denied.

No. 06–5996. BROWNING *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 134 P. 3d 816.

No. 06–6002. JOHNSON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 930 So. 2d 10.

No. 06–6003. MCALILEY *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 932 So. 2d 194.

No. 06–6013. SAVICKAS *v.* WALKER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 592.

No. 06–6028. MOSELY *v.* ROWLEY, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 06–6035. BOLEY *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–6047. PLCH *v.* NEW HAMPSHIRE. Super. Ct. N. H., Hillsborough County, Northern Dist. Certiorari denied.

No. 06–6066. BLANKENSHIP *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 203 Ore. App. 808, 129 P. 3d 803.

No. 06–6067. HURST *v.* NORTHROP GRUMMAN CORP. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 165.

No. 06–6071. COPLEY *v.* BECK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 276.

No. 06–6075. GEORGIADES *v.* CAREY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–6086. BRIDGES *v.* CHAMBERS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 447 F. 3d 994.

No. 06–6089. VAN STUYVESANT *v.* GONZALES, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 06–6092. DANIELS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 928 So. 2d 339.

No. 06–6166. STURGIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 439 F. 3d 934.

No. 06–6172. THOMPSON *v.* FLORES, WARDEN, ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 932 So. 2d 197.

No. 06–6175. SOTO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–6177. RAIFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 363.

No. 06–6180. MATHIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6185. OSBOURNE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied.

No. 06–6186. KLOSZEWSKI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6189. WOODSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–6190. MUHAMMAD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 285.

No. 06–6192. LENOIR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–6193. KING *v.* JETER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 571.

No. 06–6196. MOULTRIE, AKA JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6197. PHILIUS, AKA HILUIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 27.

No. 06–6200. MURPHY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–6201. OGBEIDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 237.

No. 06–6202. MYERS *v.* CUYAHOGA COUNTY, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 510.

No. 06–6207. SANTIAGO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 180 Fed. Appx. 337.

No. 06–6208. SHAW *v.* UNITED STATES; and
No. 06–6316. BAPTISTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 432 F. 3d 1189.

No. 06–6209. CHARLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6212. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 833.

No. 06–6213. BROOMFIELD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 743.

No. 06–6214. DEWILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 819.

No. 06–6216. MCCLOUD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6223. SALGUERO-ACOSTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 357.

No. 06–6224. LARA-MAGDALENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 458.

No. 06–6228. PATTON, AKA PATTEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–6230. CARDONA-SANDOVAL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–6235. WELLS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 449 F. 3d 167.

No. 06–6238. GONZALEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6239. HAILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 241.

No. 06–6240. GOODWIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 289.

No. 06–6244. CHRISTIAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 319.

No. 06–6246. CASTANEDA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 438 F. 3d 891.

No. 06–6247. CARLSON *v.* ALASKA. Ct. App. Alaska. Certiorari denied. Reported below: 128 P. 3d 197.

No. 06–6248. COLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 435.

No. 06–6251. KIRKHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 378.

No. 06–6252. TORRES-SANTIAGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 449 F. 3d 61.

No. 06–6253. STROMAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 905 A. 2d 194.

No. 06–6256. JENKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 181 Fed. Appx. 168.

No. 06–6257. MARTINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 689.

No. 06–6258. LUEVANO-OROZCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 376.

No. 06–6263. OLIVEROS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 902.

No. 06–6264. MINER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–6267. PERRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 750.

No. 06–6268. SLACK *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 929 So. 2d 1059.

No. 06–6271. QUEVADO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 449.

No. 06–6272. ALARCON-ESTEVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 684.

No. 06–6273. DONEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 532.

No. 06–6277. FARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 449 F. 3d 822.

No. 06–6281. GREEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 442 F. 3d 677.

No. 06–6284. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 549.

No. 06–6289. TYREE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 183 Fed. Appx. 224.

No. 06–6290. TWITTY *v.* WILEY, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 06–6291. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 388.

No. 06–6295. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 326.

No. 06–6297. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6298. LAWSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6299. MARTINEZ *v.* UNITED STATES (Reported below: 185 Fed. Appx. 386); GONZALEZ-AGUILAR *v.* UNITED STATES (187 Fed. Appx. 376); DE LA ROSA-MENDOZA, AKA ESTRADA-MARTINEZ *v.* UNITED STATES (190 Fed. Appx. 370); MEJIA-VILLAFRANCA, AKA MEJIO *v.* UNITED STATES (190 Fed. Appx. 389); GUZMAN-JASSO *v.* UNITED STATES (190 Fed. Appx. 369); and MONTALVO-GUTIERREZ, AKA MONTALVO GUTIERREZ, AKA GUTIERREZ, AKA PEREZ MERINO *v.* UNITED STATES (182 Fed. Appx. 385). C. A. 5th Cir. Certiorari denied.

No. 06–6302. SINGLETON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 259.

No. 06–6303. RODRIGUEZ-FELIX *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 450 F. 3d 1117.

No. 06–6307. KIRKLAND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 450 F. 3d 804.

No. 06–6313. DOAK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6315. BUSTOS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 551.

No. 06–6317. ANCRUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 385.

No. 06–6319. WARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 779.

No. 06–6328. ROMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–6337. SABORIT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–6338. WHITAKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 395.

No. 06–6341. WATERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 478.

No. 06–6343. ATCHLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6344. ARRIOLA-CARDONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 373.

No. 06–6346. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 272.

No. 06–6349. ROPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6351. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 452 F. 3d 382.

No. 06–6352. VILLEDA-TAVERA *v.* UNITED STATES (Reported below: 184 Fed. Appx. 435); OCAMPO-SOTELO *v.* UNITED STATES (185 Fed. Appx. 401); MARTINEZ-FERRER *v.* UNITED STATES (190 Fed. Appx. 340); GONZALEZ-MONGUIA *v.* UNITED STATES (185 Fed. Appx. 393); CARO-GONZALEZ *v.* UNITED STATES (185 Fed. Appx. 403); VARGAS-ALARCON *v.* UNITED STATES (186 Fed. Appx. 457); HERNANDEZ-ESPARZA *v.* UNITED STATES (186 Fed. Appx. 493); VENEGAS-CASTILLO *v.* UNITED STATES (190 Fed. Appx. 346); GARZA-VILLARREAL *v.* UNITED STATES (185 Fed. Appx. 414); ARREDONDO-PEREZ *v.* UNITED STATES (186 Fed. Appx. 500); MANCILLA-RANGEL *v.* UNITED STATES (185 Fed. Appx. 417); VELASQUEZ-GARAY *v.* UNITED STATES (185 Fed. Appx. 420); GOMEZ-REYES *v.* UNITED STATES (185 Fed. Appx. 424); RAMOS-GUTIERREZ *v.* UNITED STATES (190 Fed. Appx. 366); HERNANDEZ-LOPEZ, AKA CAFE *v.* UNITED STATES (190 Fed. Appx. 363); DONIS-ARREDONDO *v.* UNITED STATES (181 Fed. Appx. 487); HERNANDEZ-MARTINEZ *v.* UNITED STATES (181 Fed. Appx. 489); ANDRADE ORTIZ, AKA ANDRADE-ORTIZ *v.* UNITED

STATES (190 Fed. Appx. 370); and GUDINO-ESTRADA *v.* UNITED STATES (181 Fed. Appx. 486). C. A. 5th Cir. Certiorari denied.

No. 06–6353. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6356. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 442 F. 3d 681.

No. 06–6366. AVILA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6368. BANKS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 451 F. 3d 189.

No. 06–6369. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 172.

No. 05–1006. APOTEX INC. ET AL. *v.* PFIZER, INC. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 159 Fed. Appx. 1013.

No. 05–1285. MORRIS, A MINOR CHILD, ET AL. *v.* TANNER, JUDGE, CONFEDERATED SALISH AND KOOTENAI INDIAN TRIBAL COURT FOR THE FLATHEAD RESERVATION, ET AL. C. A. 9th Cir. Motion of Mountain States Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 160 Fed. Appx. 600.

No. 05–10671. CALDWELL ET AL. *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 429 F. 3d 521.

Statement of JUSTICE STEVENS respecting the denial of the petition for writ of certiorari.

The limitations period in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) requires a "person in custody pursuant to the judgment of a State court" to file an application for a writ of habeas corpus within one year of "the date on which the judgment became final . . . ." 28 U. S. C. §2244(d)(1)(A). This case raises the question whether a Texas order of "deferred adjudication probation" is a "judgment" under the statute. In essence, a deferred adjudication probation order places a defend-

ant on probation while postponing any adjudication of guilt. See Tex. Code Crim. Proc. Ann., Art. 42.12, § 5 (Vernon 2006 Supp. Pamphlet). If the defendant successfully completes the terms of his probation, the charges against him are dismissed, § 5(c); if he violates those terms, he is found guilty and sentenced, § 5(b). See generally *Taylor* v. *State*, 131 S. W. 3d 497, 499–500 (Tex. Crim. App. 2004). Often, a defendant's case is finally resolved many years after the entry of the order of deferred adjudication.

That is precisely what happened here. Petitioners Robert Caldwell and Pete Martinez pleaded guilty and were placed on deferred adjudication probation. Both subsequently violated the terms of their probation, had their probation revoked, were adjudicated guilty pursuant to their earlier pleas, and were given lengthy prison sentences. Promptly after the entry of orders revoking their probation, petitioners applied for federal writs of habeas corpus. The Court of Appeals held that their applications were time barred because they were filed more than one year after the entry of orders deferring adjudication. The heart of the Fifth Circuit's holding is that these earlier orders were final judgments under AEDPA.

However, as Judge DeMoss noted in his dissent, there "are two absolute essentials to a final judgment in a criminal case"—first, a determination of guilt or innocence, and second, the imposition of a sentence. *Caldwell* v. *Dretke*, 429 F. 3d 521, 531 (CA5 2005). Neither occurred prior to the revocation of petitioners' probation. Indeed, reconciling the majority's conclusion with AEDPA's text is particularly difficult because Texas law provides that a "judgment is the written declaration of the court signed by the trial judge and entered of record *showing the conviction or acquittal of the defendant*." Tex. Code Crim. Proc. Ann., Art. 42.01, § 1 (Vernon 2006 Supp. Pamphlet) (emphasis added). An order of deferred adjudication probation is not a conviction, and it is therefore not a "judgment" under Texas law. See *Davis* v. *State*, 968 S. W. 2d 368, 371 (Tex. Crim. App. 1998) (en banc). Under a literal reading of the federal statute, such an order cannot be a "judgment of a State court" within the strict terms of § 2244(d)(1)(A).

Despite this conflict between the Court of Appeals decision and the plain text of AEDPA, our decision to deny certiorari is supported by at least two valid considerations. First, if a court is convinced that a nonliteral reading of a statute is more faithful

to the actual intent of the enacting Congress, that reading should normally be preferred. See, *e. g.*, *Woodford* v. *Ngo*, 548 U. S. 81 (2006); *Koons Buick Pontiac GMC, Inc.* v. *Nigh*, 543 U. S. 50 (2004); see also *Dodd* v. *United States*, 545 U. S. 353, 361–362, and n. 1 (2005) (STEVENS, J., dissenting); *Barnhart* v. *Sigmon Coal Co.*, 534 U. S. 438, 472 (2002) (same). In this case, the Fifth Circuit had a justifiable basis for concluding that a nonliteral reading is consistent with Congress' intent to "'curb the abuse of the statutory writ of habeas corpus'" and "'address problems of unnecessary delay.'" See 429 F. 3d, at 528 (quoting H. R. Conf. Rep. No. 104–518, p. 111 (1996)). Second, the Court of Appeals expressly limited its holding to "instances where a petitioner" brings an untimely challenge to "substantive issues relating to an original order of deferred adjudication probation." 429 F. 3d, at 530, n. 24. It did not foreclose timely challenges to such orders, nor did it foreclose timely challenges to the sentencing aspects of the revocation proceedings. The Fifth Circuit also did nothing to upset the practice of deferred adjudication probation itself, which confers considerable benefits upon defendants who do not violate the terms of their probation.* This narrow holding is unlikely to produce injustice. Accordingly, the denial of certiorari is appropriate.

No. 06–145. ADAMS ET AL. *v.* PENSION BENEFIT GUARANTY CORPORATION ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 170 Fed. Appx. 142.

No. 06–162. CANO, FKA DOE *v.* BAKER, ATTORNEY GENERAL OF GEORGIA, ET AL. C. A. 11th Cir. Motions of Suzanne Besser et al., J. Budziszewski, Texas Black Americans for Life et al., and

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*See *Davis* v. *State*, 986 S. W. 2d 368, 370 (Tex. Crim. App. 1998) (en banc) ("A defendant who has been discharged from deferred adjudication [probation] is immediately eligible to serve on a jury, to vote, and to be recommended for probation by a jury after a finding of guilty at a subsequent trial" (footnotes omitted)); *Ex parte Laday*, 594 S. W. 2d 102, 104 (Tex. Crim. App. 1980) (en banc) ("The whole point of [the deferred adjudication probation] statute is to avoid having to formally adjudicate the defendant's guilt unless and until he demonstrates that he cannot abide by the terms of probation set by the court. If the defendant successfully completes his probation, his offense is essentially expunged").

Nurturing Network et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 435 F. 3d 1337.

No. 06–164. MAY ET AL. *v.* BP WEST COAST PRODUCTS LLC. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 447 F. 3d 658.

No. 06–167. TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. *v.* REMEIDIO. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 173 Fed. Appx. 636.

No. 06–172. SOMMERS, TRUSTEE *v.* WELLS FARGO BANK OF TEXAS, N. A. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 444 F. 3d 690.

No. 06–193. SMITH *v.* BANK OF AMERICA. Ct. Sp. App. Md. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 06–195. SAINT MATTHEW'S CHURCHES, INC., ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Motion of respondent Valrija Kachavos for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 06–5655. SANDERS *v.* BOEING CO. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 154 Fed. Appx. 618.

No. 06–5708. ARON *v.* QUEST DIAGNOSTICS INC. C. A. 3d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 174 Fed. Appx. 82.

Rehearing Denied

No. 05–10501. IN RE LETIZIA, 548 U. S. 902; and

No. 05–11169. BATTEN *v.* UNITED STATES, 548 U. S. 916. Petitions for rehearing denied.

OCTOBER 13, 2006

Miscellaneous Order

No. 05–998. UNITED STATES *v.* RESENDIZ-PONCE. C. A. 9th Cir. [Certiorari granted, 547 U. S. 1069.] Parties are directed to file supplemental briefs addressing the following question: "Did the indictment omit an allegation that was required by the Fifth Amendment?" Briefs, not to exceed 25 pages, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, October 27, 2006. Reply briefs, not to exceed 10 pages, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, November 3, 2006.

Certiorari Granted

No. 05–11284. ABDUL-KABIR, FKA COLE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; and

No. 05–11287. BREWER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 05–11284, 443 F. 3d 441; No. 05–11287, 442 F. 3d 273.

OCTOBER 16, 2006

Certiorari Dismissed

No. 06–5982. KRONCKE *v.* HOOD ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 06–6534. IN RE HOLTON;

No. 06–6665. IN RE MOORE;

No. 06–6677. IN RE GIBSON; and

No. 06–6787. In re King. Petitions for writs of habeas corpus denied.

No. 06–6347. In re Wise. Petition for writ of mandamus denied.

Certiorari Denied

No. 05–1159. Hatch, Attorney General of Minnesota *v.* Cellco Partnership, dba Verizon Wireless, et al. C. A. 8th Cir. Certiorari denied. Reported below: 431 F. 3d 1077.

No. 05–11142. Scott *v.* Missouri. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 183 S. W. 3d 244.

No. 05–11528. Purkey *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 428 F. 3d 738.

No. 05–11750. Galarza-Payan *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 441 F. 3d 885.

No. 06–49. Signator Insurance Agency, Inc., et al. *v.* Patten. C. A. 4th Cir. Certiorari denied. Reported below: 441 F. 3d 230.

No. 06–61. Hecla Mining Co. *v.* United States et al. C. A. 9th Cir. Certiorari denied. Reported below: 430 F. 3d 972.

No. 06–210. Hawkins *v.* Oklahoma. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 996.

No. 06–214. Winskowski *v.* City of Stephen, Minnesota. C. A. 8th Cir. Certiorari denied. Reported below: 442 F. 3d 1107.

No. 06–217. Urban Investment Trust, Inc., et al. *v.* Anderson-Dundee 53 L. L. C. et al. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 363 Ill. App. 3d 145, 841 N. E. 2d 6.

No. 06–218. Navellier Series Fund et al. *v.* Sletten, Former Trustee of the Navellier Series Fund. C. A. 9th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 196.

No. 06–222. Stuter et al. *v.* Stevens County Sheriff Department. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 664.

No. 06–228. CLAIN *v.* INTERNATIONAL STEEL GROUP. C. A. 2d Cir. Certiorari denied. Reported below: 156 Fed. Appx. 398.

No. 06–283. HEIDEN *v.* TRUJILLO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 412.

No. 06–305. CODAY *v.* REED, SECRETARY OF STATE OF WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 156 Wash. 2d 485, 130 P. 3d 809.

No. 06–308. STUART *v.* WILSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 442 F. 3d 506.

No. 06–327. LOUBSER *v.* PALA. Ct. App. Ind. Certiorari denied. Reported below: 844 N. E. 2d 229.

No. 06–348. ABBOUD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 348 F. 3d 554.

No. 06–352. ORLANDEZ-GAMBOA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 185 Fed. Appx. 86.

No. 06–363. DHINSA *v.* HERRERA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 630.

No. 06–366. VALDEZ ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 453 F. 3d 252.

No. 06–377. METSCH LAW FIRM, P. A., FKA METSCH & METSCH, P. A. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 946.

No. 06–5119. MICHALKIEWICZ *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 290 Wis. 2d 510, 712 N. W. 2d 86.

No. 06–5148. MARTINEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 347.

No. 06–5788. DOYLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–5834. COCHRANE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 27 App. Div. 3d 659, 810 N. Y. S. 2d 670.

No. 06–5854. WILLIAMS-BEY *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 06–5863. BASALDUA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–5872. CUMMINGS *v.* WONG, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–5876. NUNEZ *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 361 Ill. App. 3d 1100, 911 N. E. 2d 11.

No. 06–5877. SALAZAR *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–5878. QUINTERO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–5882. BOYD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5887. EDWARDS *v.* CENICOLA-HELVIN ENTERPRISES, DBA BANNERVIEW.COM, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 317, 130 P. 3d 1280.

No. 06–5890. JAMES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–5891. ALEXANDER *v.* WASHINGTON. C. A. 7th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 429.

No. 06–5895. PLUMMER *v.* SCHWARZENEGGER, GOVERNOR OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 06–5896. PEREZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5897. YEATS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 1745, 178 P. 3d 817.

No. 06–5899. LEWIS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5902. LAZO *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 06–5904. POIRIER *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–5906. VIOLETT *v.* CHANDLER, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–5913. LUTHER *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 157 Wash. 2d 63, 134 P. 3d 205.

No. 06–5916. GERBER *v.* CAMP HOPE CHILDREN'S BIBLE FELLOWSHIP OF NEW YORK, INC. Ct. App. N. Y. Certiorari denied. Reported below: 7 N. Y. 3d 741, 853 N. E. 2d 246.

No. 06–5919. ESCOBAR *v.* HILL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 678.

No. 06–5923. WHITE *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1256, —— N. E. 2d ——.

No. 06–5924. TURNER *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–5939. CHARLES *v.* WOODY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 533.

No. 06–5949. DAVALOS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 835 N. E. 2d 232.

No. 06–5952. DOUGLAS *v.* JAMES. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 06–5953. COLES *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 270 Va. 585, 621 S. E. 2d 109.

No. 06–5955. ROSADO *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–5957. JONES *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 147.

No. 06–5959. NARVEZ MARTINEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5960. BOLTON *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–5961. ROTH *v.* ILLINOIS STATE BOARD OF EDUCATION ET AL. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1250, — N. E. 2d —.

No. 06–5969. FOSTER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 109 Ohio St. 3d 1, 845 N. E. 2d 470.

No. 06–6014. TA'ATI *v.* BOARD OF TRUSTEES OF MONTGOMERY COLLEGE. C. A. 4th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 426.

No. 06–6021. VELEHRADSKY *v.* CRAIG INDUSTRIES, INC. Sup. Ct. Neb. Certiorari denied.

No. 06–6036. BURDEN *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 06–6059. HENDRICKSON *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 180 Fed. Appx. 148.

No. 06–6090. DANIEL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 06–6091. EWING *v.* NELSON, SUPERINTENDENT, BRIDGEWATER STATE HOSPITAL. C. A. 1st Cir. Certiorari denied.

No. 06–6095. HOLLISTER *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–6097. HOEFT *v.* WISHER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 549.

No. 06–6109. DICTADO *v.* QUINN, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 862.

No. 06–6162. CLEMONS *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 733.

No. 06–6167. BAILEY *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 191 S. W. 3d 52.

No. 06–6168. MOFFITT *v.* KNIGHT, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 06–6182. KOEHL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 06–6191. PATTERSON *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 577.

No. 06–6211. CHISM *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6226. PRIDDY *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 184 S. W. 3d 501.

No. 06–6237. HOWE *v.* LAMPERT, DIRECTOR, WYOMING DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 06–6250. VEGA *v.* KLEM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–6260. NEAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 366.

No. 06–6265. BRYANT *v.* UNITED STATES SENATE SERGEANT AT ARMS. Ct. App. D. C. Certiorari denied.

No. 06–6283. BOITNOTT *v.* CRIST, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 06–6293. SULLIVAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 1006.

No. 06–6304. THOMPSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 38 Cal. 4th 811, 135 P. 3d 3.

No. 06–6326. WARD *v.* BENNETT. C. A. 9th Cir. Certiorari denied.

No. 06–6335. STANTON *v.* PAUSMA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 510.

No. 06–6336. PAULINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 445 F. 3d 211.

No. 06–6359. BEDOYA-CANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 186 Fed. Appx. 56.

No. 06–6373. CONTRERAS-TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 448 F. 3d 821.

No. 06–6374. CARRILLO-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 816.

No. 06–6376. STEELE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 543.

No. 06–6377. VELASQUEZ-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 438.

No. 06–6378. REID *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6382. JUAREZ-PALOMO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 285.

No. 06–6383. LITTLEFIELD *v.* HINKLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 312.

No. 06–6384. AGUIRRE-GANCEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 719.

No. 06–6386. BENITEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 764.

No. 06–6388. CULWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–6393. COOPER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 186 Fed. Appx. 59.

No. 06–6394. ESCONTRIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 268.

No. 06–6399. CRUZ-NAVARRO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 699.

No. 06–6400. CINTRON-ORTIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–6403. LOCKLEAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 277.

No. 06–6405. MCKOY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 452 F. 3d 234.

No. 06–6406. SPRAGUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 794.

No. 06–6408. CASTILLO, AKA TORRES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 186 Fed. Appx. 25.

No. 06–6409. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 183 Fed. Appx. 264.

No. 06–6411. WILLITS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 962.

No. 06–6412. WORLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 453 F. 3d 706.

No. 06–6413. ESPINOSA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 449 F. 3d 1301.

No. 06–6414. COTTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6415. COMISAR, AKA BRADSHAW, AKA CAMPBELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 651.

No. 06–6416. DONELSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 450 F. 3d 768.

No. 06–6417. CAIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 732.

No. 06–6421. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 183 Fed. Appx. 246.

No. 06–6422. WILLIAMSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 354.

No. 06–6423. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 573.

No. 06–6425. MOYE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 454 F. 3d 390.

No. 06–6427. ZEBROWSKI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 203.

No. 06–6431. ARCIGA-BUSTAMANTE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 06–6432. BEACH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 205.

No. 06–6433. JIMENEZ-CALDERON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 183 Fed. Appx. 274.

No. 06–6436. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 846.

No. 06–6437. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–6441. COPEMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 821.

No. 06–6442. CAGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 883.

No. 06–6444. STEPHENSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 905 A. 2d 804.

No. 06–6446. REEVES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 902 A. 2d 88.

No. 06–6448. WATERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6449. ALVARADO-HENRIQUEZ, AKA HERNANDEZ-ORELLANA *v.* UNITED STATES (Reported below: 190 Fed. Appx. 367); AMAYA-REYES *v.* UNITED STATES (186 Fed. Appx. 453); BRIONES, AKA GONZALEZ-HERNANDEZ, AKA FUENTES-ARRIAGA *v.* UNITED STATES (186 Fed. Appx. 440); DURAN-RIVERA *v.* UNITED STATES (185 Fed. Appx. 400); ESQUIVEL-HUERTA *v.* UNITED STATES (185 Fed. Appx. 382); GARCIA-LOPEZ *v.* UNITED STATES (190 Fed. Appx. 368); GARCIA-MORALES, AKA BARRIENTOS *v.* UNITED STATES (181 Fed. Appx. 488); HERNANDEZ-HERNANDEZ *v.* UNITED STATES (186 Fed. Appx. 441); HERNANDEZ-MARTINEZ,

AKA HERNANDEZ-GONZALEZ *v.* UNITED STATES (186 Fed. Appx. 450); MARES-CALDERON *v.* UNITED STATES (185 Fed. Appx. 330); RODRIGUEZ-LOPEZ *v.* UNITED STATES (185 Fed. Appx. 374); SOTO-GARCIA *v.* UNITED STATES (186 Fed. Appx. 439); and REYNA-RIOS *v.* UNITED STATES (190 Fed. Appx. 342). C. A. 5th Cir. Certiorari denied.

No. 06–6451. WOODBURY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 369.

No. 06–6452. LIMONES-ALVARADO *v.* UNITED STATES (Reported below: 185 Fed. Appx. 332); IPINA-IPINA *v.* UNITED STATES (185 Fed. Appx. 377); VASQUEZ-TORRES *v.* UNITED STATES (185 Fed. Appx. 388); HERNANDEZ-MENDEZ, AKA MARTINEZ-MENDEZ *v.* UNITED STATES (186 Fed. Appx. 459); IBARRA-PEREZ *v.* UNITED STATES (190 Fed. Appx. 339); DUARTE-RIVERA *v.* UNITED STATES; MERCHAN-LINARES, AKA RODRIGUEZ *v.* UNITED STATES (188 Fed. Appx. 272); TREVINO-GOMEZ, AKA GARCIA-GONZALEZ *v.* UNITED STATES (181 Fed. Appx. 475); OJEDA-ZARAGOZA *v.* UNITED STATES (190 Fed. Appx. 371); BERMUDEZ-ANGELES *v.* UNITED STATES (190 Fed. Appx. 388); CERVANTES-HIGUERA *v.* UNITED STATES (181 Fed. Appx. 489); MONTOYA-ESPINAL, AKA GUAJARDO-ESPINAL *v.* UNITED STATES (190 Fed. Appx. 381); GARCIA-GOMEZ *v.* UNITED STATES (191 Fed. Appx. 269); ROBLES-CORDERO, AKA CAMPOS *v.* UNITED STATES (195 Fed. Appx. 285); RODRIGUEZ-MARTINEZ *v.* UNITED STATES (195 Fed. Appx. 252); RAMIREZ-PEREZ, AKA GARCIA-GARCIA *v.* UNITED STATES (195 Fed. Appx. 249); ARMAS HERNANDEZ *v.* UNITED STATES (195 Fed. Appx. 234); and CARMON-NIEVES *v.* UNITED STATES (195 Fed. Appx. 230). C. A. 5th Cir. Certiorari denied.

No. 06–6453. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 265.

No. 06–6457. SCHECKEL *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 511.

No. 06–6458. GRAHAM ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–6460. FIELDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 297.

No. 06–6461. MCCLELLAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–6462. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 570.

No. 06–6465. FERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 184 Fed. Appx. 126.

No. 06–6467. MACKEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–6473. BANKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 217.

No. 06–6486. PARKER *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 439 F. 3d 81.

No. 06–6491. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6495. ARIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 431 F. 3d 1327.

No. 06–6496. BREHM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 442 F. 3d 1291.

No. 06–6498. MABREY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 271.

No. 06–6504. CHUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6505. ELLIOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–6506. CONTEH *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 1st Cir. Certiorari denied.

No. 06–6507. CABALLERO-VILLEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 654.

No. 06–6510. AVILA-CARBAJAL *v.* UNITED STATES (Reported below: 185 Fed. Appx. 359); SANCHEZ-HERRERA *v.* UNITED STATES (187 Fed. Appx. 368); FRANCO-VILLAGRAN *v.* UNITED STATES (186 Fed. Appx. 441); SEGOVIA-SALINAS, AKA PINEDA, AKA ESQUIBEL, AKA SALINAS *v.* UNITED STATES (185 Fed. Appx. 429); GUERRERO-RUIZ *v.* UNITED STATES (185 Fed. Appx. 414); HERNANDEZ-RIVAS *v.* UNITED STATES (181 Fed. Appx. 486); RINCON-GARZA *v.* UNITED STATES (190 Fed. Appx. 369);

ALVAREZ-GAMEZ *v.* UNITED STATES (190 Fed. Appx. 387); and RUFINO-CERVANTES *v.* UNITED STATES (190 Fed. Appx. 380). C. A. 5th Cir. Certiorari denied.

No. 06–6511. BENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–6512. ARNESON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 782.

No. 06–6513. ALLEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 440 F. 3d 449.

No. 06–6517. MARQUEZ *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 06–6518. SHOELS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–6520. SCOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–6521. RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6524. DUVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–6528. MARSHALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 186 Fed. Appx. 246.

No. 06–6529. MARTINEZ-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 628.

No. 06–6532. LOZOYA-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 448.

No. 06–6535. RAMOS-DURAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 696.

No. 06–6540. ALLEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 722.

No. 06–6543. ADAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 263.

No. 06–6544. BARRAGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 626.

No. 06–6545. HILL *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 464 F. 3d 1256.

No. 06–6546. TUCKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 549.

No. 06–6548. RUIZ-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 630.

No. 06–6555. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 730.

No. 06–6560. CARRANZA-MUNOZ *v.* UNITED STATES (Reported below: 185 Fed. Appx. 398); RODRIGUEZ-PINON *v.* UNITED STATES (187 Fed. Appx. 371); GALVAN-PENA, AKA GARCIA *v.* UNITED STATES (185 Fed. Appx. 395); and RODRIGUEZ-PEREZ *v.* UNITED STATES (185 Fed. Appx. 386). C. A. 5th Cir. Certiorari denied.

No. 06–6567. OGLESBEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 359.

No. 06–6568. PARKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 462 F. 3d 273.

No. 06–6572. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 453 F. 3d 302.

No. 06–6575. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 451 F. 3d 1239.

No. 06–6576. LOREDO-BERNAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 624.

No. 06–6580. VALLEJO-BONAPARTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 689.

No. 06–6582. TANIGUCHI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6586. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 450 F. 3d 366.

No. 06–40. EVANS *v.* CITY OF BERKELEY, CALIFORNIA. Sup. Ct. Cal. Motions of Thomas More Law Center, Boy Scouts of America, and United States Justice Foundation et al. for leave to

file briefs as *amici curiae* granted. Certiorari denied. Reported below: 38 Cal. 4th 1, 129 P. 3d 394.

No. 06–59. COATES *v.* AGILENT TECHNOLOGIES ET AL. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 06–216. YAFFE *v.* SMITH BARNEY DIVISION OF CITIGROUP GLOBAL MARKETS, INC. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 177 Fed. Appx. 567.

No. 06–223. DREBICK ET UX., DBA DREBICK INVESTMENTS *v.* CITY OF OLYMPIA, WASHINGTON. Sup. Ct. Wash. Motions of New England Legal Foundation et al., Building Industry Association of Washington, Master Builders Association of Pierce County, and National Association of Home Builders for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 156 Wash. 2d 289, 126 P. 3d 802.

No. 06–230. POWERS ET AL. *v.* WELLS FARGO BANK NA ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 439 F. 3d 1043.

No. 06–6522. DRABOVSKIY *v.* UNITED STATES. C. A. 6th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 05–10939. DUBOC *v.* UNITED STATES, 547 U. S. 1213. Petition for rehearing denied.

OCTOBER 18, 2006

Miscellaneous Order

No. 06–6815. IN RE RUTHERFORD. Petition for writ of mandamus denied.

Certiorari Denied

No. 06–7028 (06A361). RUTHERFORD *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS would grant the application for stay of execution. Reported below: 466 F. 3d 970.

No. 06–7133 (06A382). RUTHERFORD *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 940 So. 2d 1112.

No. 06–7190 (06A387). RUTHERFORD *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 945 So. 2d 1113.

No. 06–7196 (06A389). WILCHER *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Motion of Habeas Law Scholars David R. Dow et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 203 Fed. Appx. 559.

OCTOBER 20, 2006

Certiorari Granted—Vacated and Remanded. (See Nos. 06A375 and 06A379, *ante*, p. 1.)

OCTOBER 24, 2006

Miscellaneous Order

No. 06A408. LUNDGREN *v.* TAFT, GOVERNOR OF OHIO, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

OCTOBER 25, 2006

Miscellaneous Orders

No. 06A427. SUMMERS *v.* EIDSON, DISTRICT ATTORNEY OF TAYLOR COUNTY, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

No. 06–7358 (06A425). IN RE SUMMERS. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied. JUSTICE ALITO took no part in the consideration or decision of this application and this petition.

Certiorari Denied

No. 06–7284 (06A405). ROLLING *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE BREYER would grant the application for stay of execution. Reported below: 944 So. 2d 176.

No. 06–7360 (06A426). SUMMERS *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE ET AL. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this application and this petition. Reported below: 206 Fed. Appx. 317.

OCTOBER 26, 2006

Certiorari Denied

No. 06–7308 (06A419). HUTCHERSON *v.* RILEY ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 468 F. 3d 750.

OCTOBER 27, 2006

Miscellaneous Order

No. 05–9222. BURTON *v.* STEWART, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. [Certiorari granted *sub nom. Burton* v. *Waddington*, 547 U. S. 1178.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

Certiorari Granted

No. 05–983. WINKELMAN, A MINOR, BY AND THROUGH HIS PARENTS AND LEGAL GUARDIANS, WINKELMAN ET UX., ET AL. *v.* PARMA CITY SCHOOL DISTRICT. C. A. 6th Cir. Certiorari granted.

No. 05–1541. EC TERM OF YEARS TRUST *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 434 F. 3d 807.

No. 05–1631. SCOTT *v.* HARRIS. C. A. 11th Cir. Certiorari granted. Reported below: 433 F. 3d 807.

No. 05–1056. MICROSOFT CORP. *v.* AT&T CORP. C. A. Fed. Cir. Motion of Software & Information Industry Association for leave to file a brief as *amicus curiae* granted. Certiorari granted. THE CHIEF JUSTICE took no part in the consideration or decision of this motion and this petition. Reported below: 414 F. 3d 1366.

OCTOBER 30, 2006

Certiorari Dismissed

No. 06–6000. CARTER *v.* TENNESSEE. Ct. Crim. App. Tenn. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–6001. CARTER *v.* TENNESSEE. Ct. Crim. App. Tenn. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–6016. BIERLEY *v.* GROLUMOND, DEPUTY SHERIFF, ERIE COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 174 Fed. Appx. 673.

No. 06–6041. MINNIECHESKE *v.* CITY OF OSHKOSH, WISCONSIN, ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 06A327 (06–6643). ANDREWS *v.* UNITED STATES. C. A. 4th Cir. Application for stay, addressed to JUSTICE BREYER and referred to the Court, denied.

No. 06M31. MILTON *v.* UNITED STATES;

No. 06M32. CONNER *v.* LIONS GATE ENTERTAINMENT CORP. ET AL.;

No. 06M33. BLACK *v.* WILKINSON, WARDEN;

No. 06M34. BLACK *v.* UNITED STATES POSTAL SERVICE; and

No. 06M35. STANKEVITCH *v.* KOHLER ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 05–381. WEYERHAEUSER CO. *v.* ROSS-SIMMONS HARDWOOD LUMBER CO., INC. C. A. 9th Cir. [Certiorari granted, 548 U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–1629. GONZALES, ATTORNEY GENERAL *v.* DUENAS-ALVAREZ. C. A. 9th Cir. [Certiorari granted, 548 U. S. 942.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 06–273. COX, ATTORNEY GENERAL OF MICHIGAN, ET AL. *v.* DAIMLERCHRYSLER CORP. ET AL. C. A. 6th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 06–6829. IN RE SIMS;

No. 06–6979. IN RE BULLARD; and

No. 06–7003. IN RE RANGEL. Petitions for writs of habeas corpus denied.

No. 06–325. IN RE KAHN;

No. 06–6134. IN RE MOSSERI; and

No. 06–6962. IN RE TRIPLETT. Petitions for writs of mandamus denied.

No. 06–6219. IN RE MURDOCK. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

No. 06–6931. IN RE MCQUIDDY. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 05–11311. FRALEY *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 922 So. 2d 223.

No. 05–11350. SPICER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 921 So. 2d 292.

No. 05–11373. BECK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 429 F. 3d 521.

No. 05–11376. BARNUM *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 921 So. 2d 513.

No. 05–11422. CORBETT *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 360 N. C. 287, 624 S. E. 2d 625.

No. 05–11656. CLOWNEY *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–11819. MORECRAFT *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 05–11821. PRYOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 317.

No. 06–78. OMAR *v.* BABCOCK ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 59.

No. 06–83. HUSSAIN *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. D. C. Cir. Certiorari denied. Reported below: 435 F. 3d 359.

No. 06–105. SAUVAGE *v.* CHERTOFF, SECRETARY OF HOMELAND SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 932.

No. 06–122. SAMADI *v.* MBNA AMERICA BANK, N. A. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 863.

No. 06–137. HASKELL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–140. SIDHU *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 221.

No. 06–159. CULPEPPER & CARROLL, PLLC *v.* COLE. Sup. Ct. La. Certiorari denied. Reported below: 929 So. 2d 1224.

No. 06–233. GIBSON *v.* ADA COUNTY, IDAHO, ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 142 Idaho 746, 133 P. 3d 1211.

No. 06–240. BADE *v.* COURTESY OLDSMOBILE, INC. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 150.

No. 06–244. WALKER *v.* MEMBERS OF CONGRESS OF THE UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 770.

No. 06–245. SCWHICHTENBERG *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 06–246. MCLEAY *v.* BERGAN MERCY HEALTH SYSTEMS CORP., DBA BERGAN MERCY MEDICAL CENTER. Sup. Ct. Neb. Certiorari denied. Reported below: 271 Neb. 602, 714 N. W. 2d 7.

No. 06–247. JOU *v.* SCHMIDT, INSURANCE COMMISSIONER, HAWAII DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, ET AL. Sup. Ct. Haw. Certiorari denied. Reported below: 110 Haw. 418, 133 P. 3d 1210.

No. 06–248. EDMONDS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 840 N. E. 2d 456.

No. 06–249. ROBERTS *v.* WMC MORTGAGE CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 545.

No. 06–252. YUHASZ *v.* PORITZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 166 Fed. Appx. 642.

No. 06–254. MCGEE *v.* MARCUM. C. A. 6th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 464.

No. 06–255. ANDERSON *v.* FORD MOTOR CO. Ct. App. Mich. Certiorari denied.

No. 06–257. ELLMAN *v.* PRYOR ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–259. HOUSLER *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 193 S. W. 3d 476.

No. 06–266. SERRANO ET AL. *v.* WORKMAN. Ct. App. Minn. Certiorari denied.

No. 06–276. ARMSTRONG *v.* CITY OF CONYERS, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–277. J. N. F. *v.* A. S. ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 941 So. 2d 973.

No. 06–281. WHITE *v.* CRIME PREVENTION SECURITY SPECIALISTS ET AL. Ct. App. Mich. Certiorari denied.

No. 06–284. KEYTER *v.* LOCKE, GOVERNOR OF WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 684.

No. 06–285. MAHONEY *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 188 N. J. 359, 908 A. 2d 162.

No. 06–288. CROSSLEY *v.* FERRE-ROIG. Sup. Ct. P. R. Certiorari denied.

No. 06–290. PHELPS *v.* ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 630.

No. 06–292. ARMSTRONG *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied.

No. 06–294. CLARK ET AL. *v.* STRAYHORN, COMPTROLLER OF PUBLIC ACCOUNTS OF TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 184 S. W. 3d 906.

No. 06–296. ARTICLE II GUN SHOP, INC., DBA GUN WORLD *v.* GONZALES, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 441 F. 3d 492.

No. 06–302. DAVIS ET AL. *v.* BROWN ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 221 Ill. 2d 435, 851 N. E. 2d 1198.

No. 06–303. EASTERLING, AS PERSONAL REPRESENTATIVE OF THE WRONGFUL DEATH BENEFICIARIES OF MAGEE *v.* UNIVERSITY OF MISSISSIPPI MEDICAL CENTER. Sup. Ct. Miss. Certiorari denied. Reported below: 928 So. 2d 815.

No. 06–310. ABU HASHISH *v.* GONZALES, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 442 F. 3d 572.

No. 06–311. MILLER *v.* COMMODITY FUTURES TRADING COMMISSION. C. A. 9th Cir. Certiorari denied.

No. 06–312. NALLY *v.* BARTOW COUNTY GRAND JURORS ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 280 Ga. 790, 633 S. E. 2d 337.

No. 06–322. MORTERS *v.* AIKEN & SCOPTUR, S. C., ET AL. Ct. App. Wis. Certiorari denied. Reported below: 289 Wis. 2d 833, 712 N. W. 2d 71.

No. 06–323. SILVERSTEIN *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 180 Fed. Appx. 915.

No. 06–342. MONTGOMERY *v.* UNITED STATES POSTAL SERVICE. C. A. 11th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 963.

No. 06–353. ARLAINE & GINA ROCKEY, INC. *v.* CORDIS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 175 Fed. Appx. 329.

No. 06–357. ARMSTRONG *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 848 N. E. 2d 1088.

No. 06–375. FEDERAL KEMPER LIFE ASSURANCE CO. *v.* SAMPATHACHAR. C. A. 3d Cir. Certiorari denied. Reported below: 186 Fed. Appx. 227.

No. 06–380. LIN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 189 Fed. Appx. 946.

No. 06–387. PORTER ET AL. *v.* RAY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 461 F. 3d 1315.

No. 06–393. HARRIS *v.* CREATIVE HAIRDRESSERS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 228.

No. 06–399. CORNISH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–416. SKIDMORE ENERGY, INC., ET AL. *v.* MAGHREB PETROLEUM EXPLORATION, S. A., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 3d 564.

No. 06–417. RUTHERFORD ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 589.

No. 06–418. NOVAK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 443 F. 3d 150 and 188 Fed. Appx. 9.

No. 06–424. COLEY *v.* LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 409.

No. 06–433. PEREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 412.

No. 06–441. MCCUISTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 474.

No. 06–453. GIRALDO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–459. DOE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 445 F. 3d 266.

No. 06–461. SALADINO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 812.

No. 06–5237. TAYLOR *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 186 S. W. 3d 253.

No. 06–5254. HATCHER *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 06–5457. BENJAMIN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 940 So. 2d 371.

No. 06–5553. MARQUARDT *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 286 Wis. 2d 204, 705 N. W. 2d 878.

No. 06–5650. OUTLAW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 295.

No. 06–5662. GUZMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 874.

No. 06–5674. TEMPLE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 447 F. 3d 130.

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No. 06–5986. MAHDI, FKA SMITH *v.* HOUK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–5992. STEARNS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–6020. JACKSON *v.* J. E. WINGFIELD & ASSOCIATES, P. C. C. A. D. C. Cir. Certiorari denied. Reported below: 171 Fed. Appx. 352.

No. 06–6031. THOMAS *v.* JENKS ET AL. C. A. 10th Cir. Certiorari denied.

No. 06–6037. MILSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–6040. MITCHELL *v.* CALIFORNIA STATE PERSONNEL BOARD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–6042. PEREZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6046. MORAN *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6048. DELEON *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–6053. TATE *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 937 So. 2d 666.

No. 06–6060. HUGGINS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 38 Cal. 4th 175, 131 P. 3d 995.

No. 06–6064. BATES *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 06–6065. BARRON *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 06–6074. CHRISTIAN *v.* CITY OF SEBRING, OHIO, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–6083. NEALY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 324.

No. 06–6093. COBBS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 889 A. 2d 111.

No. 06–6094. FORD *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 741.

No. 06–6098. HUERTA *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6104. LANDRY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 925 So. 2d 1221.

No. 06–6105. JEMMERISON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6110. COLEMAN *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied. Reported below: 188 S. W. 3d 708.

No. 06–6114. MORR *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 850.

No. 06–6117. TIJERINA *v.* UTAH BOARD OF PARDONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 782.

No. 06–6120. BROOKS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 06–6137. CATUARA *v.* WASHINGTON MUTUAL BANK, F. A. C. A. 7th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 93.

No. 06–6138. BROWNLEE *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6140. HENDERSON *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 139 N. M. 595, 136 P. 3d 1005.

No. 06–6141. HUMPHREY *v.* DEUTH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–6144. GONZALEZ *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6146. ILARION *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 653.

No. 06–6148. GONZALES *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 190 S. W. 3d 125.

No. 06–6149. THOMAS *v.* FEDERAL CONGRESS MEMBER ENFORCEMENT OF PRISON LITIGATION REFORM ACT ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–6150. TATE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 937 So. 2d 1100.

No. 06–6153. PLASENCIA *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 613.

No. 06–6154. WALLS *v.* CARROLL, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 06–6161. ELLISON *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 213 Ariz. 116, 140 P. 3d 899.

No. 06–6163. ELLIOTT *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 360 N. C. 400, 628 S. E. 2d 735.

No. 06–6169. MIRANDA-ALVARADO ET AL. *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 449 F. 3d 915.

No. 06–6173. WILSON *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 06–6174. SUMMERS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–6176. SAVAGE *v.* OHIO. Ct. App. Ohio, Geauga County. Certiorari denied.

No. 06–6178. KACHADORIAN *v.* SPENCER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied.

No. 06–6179. MANN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6181. WILLIAMS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 174.

No. 06–6184. PANNELL *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 994.

No. 06–6194. KNIGHT *v.* TARGET CORP. C. A. 11th Cir. Certiorari denied.

No. 06–6199. JONES *v.* MAYNARD, DIRECTOR, IOWA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied.

No. 06–6203. KING *v.* BOBBY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 433 F. 3d 483.

No. 06–6205. CLARK *v.* MULLINS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 551.

No. 06–6206. CLARK *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–6210. CANNON *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–6215. CUESTA *v.* BERTRAND ET AL. C. A. 7th Cir. Certiorari denied.

No. 06–6217. AUSTIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–6218. PUGH *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Sup. Ct. Mich. Certiorari denied. Reported below: 475 Mich. 852, 713 N. W. 2d 266.

No. 06–6220. MEEKS *v.* BELL, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 06–6225. BURL *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 760.

No. 06–6227. NIX *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 06–6229. STUDDARD *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 06–6232. MAIA PIRES *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 06–6233. MCNABB *v.* LOCKYER, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–6236. GAMBLE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 450 F. 3d 1245.

No. 06–6241. HEIMBERGER *v.* CITY OF BEACHWOOD, OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 06–6242. GARDNER *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 961.

No. 06–6243. HUDSON *v.* UNIVERSITY OF MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–6249. WILLIAMS *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 441 F. 3d 1030.

No. 06–6266. MCCALVIN *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 444 F. 3d 713.

No. 06–6287. ROTH *v.* HOFFER. Sup. Ct. N. D. Certiorari denied. Reported below: 715 N. W. 2d 149.

No. 06–6288. REVELS *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–6296. MARDIS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 931 So. 2d 913.

No. 06–6310. JACKSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 06–6312. COX *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–6318. MCKENZIE *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 707 N. W. 2d 643.

No. 06–6327. VASQUEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–6329. SANTIAGO-LUGO *v.* UNITED STATES; and
No. 06–6681. SANTIAGO-LUGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–6354. MCDANIEL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1234, — N. E. 2d —.

No. 06–6375. SMITH *v.* BURGE, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 27 App. Div. 3d 1156, 811 N. Y. S. 2d 844.

No. 06–6395. SMITH *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 06–6398. ROBINSON *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 438 F. 3d 350.

No. 06–6404. MATSON *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 844 N. E. 2d 566.

No. 06–6419. WILKES *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–6429. AMEN *v.* OFFICE OF DISCIPLINARY COUNSEL. Sup. Ct. Haw. Certiorari denied.

No. 06–6443. RILEY *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–6470. CUYLER *v.* RAYCOM MEDIA, INC., DBA WOIO/WUAB CHANNELS 19 AND 43, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–6475. LINCOLN *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 166 Md. App. 758.

No. 06–6483. SAMPER *v.* FISHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 175 Fed. Appx. 471.

No. 06–6499. BUCK *v.* PATENT AND TRADEMARK OFFICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 712.

No. 06–6500. LEWIS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 454 F. 3d 778.

No. 06–6547. PEAK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6550. PRUITT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 323.

No. 06–6554. RIGGS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 651.

No. 06–6559. DEGARMO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 450 F. 3d 360.

No. 06–6561. YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 840.

No. 06–6562. SUAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 634.

No. 06–6569. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 330.

No. 06–6571. PEREZ *v.* NISH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–6574. LINEBERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 366.

No. 06–6584. PARKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–6590. McQUINN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 202.

No. 06–6591. RICHES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 480.

No. 06–6595. MERCADO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 526.

No. 06–6600. KUCERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 136.

No. 06–6601. MITCHELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 686.

No. 06–6602. PATTERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 173.

No. 06–6604. WILKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 445.

No. 06–6605. DE LA GARZA *v.* UNITED STATES (Reported below: 186 Fed. Appx. 463); GUERRERO-TEJADA, AKA GUERRERO-LOPEZ *v.* UNITED STATES (186 Fed. Appx. 489); PEREZ-RAMIREZ *v.* UNITED STATES (187 Fed. Appx. 412); and MIRANDA-ECHARTEA *v.* UNITED STATES (188 Fed. Appx. 298). C. A. 5th Cir. Certiorari denied.

No. 06–6607. LUCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 468.

No. 06–6608. OLIVER *v.* ZENON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 440.

No. 06–6611. RIVERA-MENDEZ *v.* UNITED STATES (Reported below: 186 Fed. Appx. 461); CASTELLANOS *v.* UNITED STATES (186 Fed. Appx. 487); CHAVERO-OLIVARES *v.* UNITED STATES (190 Fed. Appx. 385); BERMUDEZ-AREVALO *v.* UNITED STATES (190 Fed. Appx. 386); GUERRERO-JUAREZ *v.* UNITED STATES (190 Fed. Appx. 386); VEGA-HERNANDEZ *v.* UNITED STATES (190 Fed. Appx. 389); and HEWITT *v.* UNITED STATES (190 Fed. Appx. 390). C. A. 5th Cir. Certiorari denied.

No. 06–6615. BAILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6616. BETANCOURT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–6617. BRADFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 422.

No. 06–6630. ARTEAGA-BROWN *v.* UNITED STATES (Reported below: 185 Fed. Appx. 391); BENEGAS-HERRERA *v.* UNITED STATES (185 Fed. Appx. 396); PATINO-CRUZ *v.* UNITED STATES (185 Fed. Appx. 394); ENRIQUEZ-GUEVARA, AKA MARTINEZ *v.* UNITED STATES (187 Fed. Appx. 370); MONDRAGON-MALDONADO *v.* UNITED STATES (185 Fed. Appx. 402); and GARCIA-ALEMAN *v.* UNITED STATES (186 Fed. Appx. 452). C. A. 5th Cir. Certiorari denied.

No. 06–6640. ROSADO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 336.

No. 06–6641. OLIVARES-SAMON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 449 F. 3d 1168.

No. 06–6643. ANDREWS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 778.

No. 06–6648. AGUILAR-TERAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 498.

No. 06–6649. BERRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 670.

No. 06–6652. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 250.

No. 06–6653. HICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 964.

No. 06–6654. HARMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 194.

No. 06–6658. NANCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 363.

No. 06–6659. HUGHES *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 171 Fed. Appx. 339.

No. 06–6661. HERNANDEZ *v.* UNITED STATES (Reported below: 189 Fed. Appx. 306); LIEVANOS *v.* UNITED STATES (186 Fed. Appx. 462); and TORRES *v.* UNITED STATES (190 Fed. Appx. 393). C. A. 5th Cir. Certiorari denied.

No. 06–6663. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 335.

No. 06–6664. TAYLOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 184 Fed. Appx. 146.

No. 06–6666. WALTON *v.* HERNANDEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 632.

No. 06–6667. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 292.

No. 06–6671. HOLLAND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–6674. HICKMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 322.

No. 06–6675. GONZALEZ-PATINO, AKA GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 285.

No. 06–6676. GADSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 262.

No. 06–6683. LIZARDO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 445 F. 3d 73.

No. 06–6686. RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 668.

No. 06–6691. DIAZ-ZANOLETTI, AKA DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 392.

No. 06–6692. SMITH *v.* POTTER, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 733.

No. 06–6693. RUIZ-CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 731.

No. 06–6696. SWEETENBURG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 879.

No. 06–6698. RAMIREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 454 F. 3d 380.

No. 06–6699. VARGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 185 Fed. Appx. 111.

No. 06–6701. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6704. FORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 496.

No. 06–6707. GRULLON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–6708. GHALI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 391.

No. 06–6720. FLORENCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6721. GRIFALDO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 932 So. 2d 192.

No. 06–6724. DUBOSE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–6725. MCCHESNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 724.

No. 06–6727. BOICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–6728. VERA-GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 367.

No. 06–6732. BOSTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 504.

No. 06–6734. RAMOS-ARELLANES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 372.

No. 06–6736. JENKINS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 452 F. 3d 207.

No. 06–6737. LOUCKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6741. GONZALEZ-PARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 600.

No. 06–6742. ALTAMIRANO-FIERRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 364.

No. 06–6743. CASTRO ESTUPINAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 951.

No. 06–6746. CAMPBELL ET UX. *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–6747. HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 922.

No. 06–6754. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 343.

No. 06–6755. GRANJA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6757. GORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 372.

No. 06–6758. HERRERA HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 858.

No. 06–6759. MCFADDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 290.

No. 06–6761. OYORZAVAL-VERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 398.

No. 06–6765. MASCAK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 668.

No. 06–6769. PENNAVARIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 445 F. 3d 720.

No. 06–6771. OROS-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 677.

No. 06–6773. SALAZAR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 484.

No. 06–6774. RAMSEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 686.

No. 06–6775. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 871.

No. 06–6776. CASEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 444 F. 3d 1071.

No. 06–6777. ANDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 450 F. 3d 284.

No. 06–6779. KESZTHELYI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6781. KRAUSE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–6782. BARRIOS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 676.

No. 06–6783. BARATTO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 187 Fed. Appx. 127.

No. 06–6788. VARGAS-SANCEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 711.

No. 06–6791. GASKIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 190 Fed. Appx. 204.

No. 06–6792. HOFLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 174.

No. 06–6801. MASTERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 230.

No. 06–6805. PARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 118.

No. 06–6806. ABDUR-RAHEEM, AKA CRANDALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 185 Fed. Appx. 205.

No. 06–6807. MENDEZ, AKA COLON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 419.

No. 06–6808. WILKES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 219.

No. 06–6809. VALDIVIA-DE ARCOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 382.

No. 06–6810. THOMAS *v.* UNITED STATES; and
No. 06–6906. WALLACE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 178 Fed. Appx. 76.

No. 06–6811. VELA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 888.

No. 06–6813. GAREY *v.* STIFF, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 118.

No. 06–6816. DIX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 846.

No. 06–6817. PADILLA, AKA CRUZ, AKA PEVALTA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 190 Fed. Appx. 119.

No. 06–6818. WARDRICK *v.* SHERMAN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 258.

No. 06–6820. EDMISTON *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 06–6822. SPENCE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 180 Fed. Appx. 298.

No. 06–6823. SANTIAGO-LUGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–6831. WALDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 308.

No. 06–6834. THOMPSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–6837. MCGUIRE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 185 Fed. Appx. 15.

No. 06–6838. MCKENNEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 450 F. 3d 39.

No. 06–6840. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 286.

No. 06–6842. CHRISTIANSEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 767.

No. 06–6844. DARKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 446 F. 3d 762.

No. 06–6846. BOWIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 695.

No. 06–6848. ROUSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–6855. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 955.

No. 06–6857. VIRULA-ARREDONDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 920.

No. 06–6861. PARRADO *v.* OUTLAW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–6862. MITCHELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6863. DADE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–6864. COUNCE *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 06–6866. CASTILLIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 603.

No. 06–6869. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–6870. LOUIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 500.

No. 06–6875. TARNAWA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 294.

No. 06–6876. BISHOP *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 453 F. 3d 30.

No. 06–6886. HOPKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–6888. COLEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 276.

No. 06–6890. DOE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–6891. MICKENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 453 F. 3d 668.

No. 06–6894. MARTINEZ-HUERTAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 721.

No. 06–6895. LIMON-RUIZ *v.* UNITED STATES; ENCISCO-HERNANDEZ *v.* UNITED STATES (Reported below: 196 Fed. Appx. 316); and MANCILLA-MENDEZ *v.* UNITED STATES (191 Fed. Appx. 273). C. A. 5th Cir. Certiorari denied.

No. 06–6897. RIDDLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 367.

No. 06–6899. PASTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 190 Fed. Appx. 138.

No. 06–6901. WOODS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 524.

No. 06–6903. TERRIQUEZ-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 574.

No. 06–6907. YAZZEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 800.

No. 06–6908. LACY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 446 F. 3d 448.

No. 06–6913. PEREZ-PENA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 453 F. 3d 236.

No. 06–6914. NAJAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 451 F. 3d 710.

No. 06–6915. RHODES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 440 F. 3d 363.

No. 06–6918. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 914.

No. 06–6922. WISHON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 191.

No. 06–6923. MACARIO-FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 332.

No. 06–6928. DANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 189.

No. 06–6929. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–6930. NEWKIRK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 186 Fed. Appx. 116.

No. 06–6934. KOKOSKI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 263.

No. 06–6942. WINSTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6943. ORTEGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 266.

No. 06–6944. ORTIZ-CINTRON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 461 F. 3d 78.

No. 06–6952. ESCOBEDO-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–6954. CURRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 863.

No. 06–6958. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 620.

No. 06–6959. HUERTA-PIMENTEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 445 F. 3d 1220.

No. 06–6964. HODGES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 221.

No. 06–6972. KIRK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 180 Fed. Appx. 207.

No. 06–6974. GARCIA-PEREZ, AKA GARCIA-CONTRERAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 367.

No. 06–6975. ISAACS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–6978. TUCKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 543.

No. 06–6987. BAILEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 846.

No. 06–97. STOLT-NIELSEN, S. A., ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 442 F. 3d 177.

No. 06–253. COLLIER *v.* PRUETT ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 159 Fed. Appx. 813.

No. 06–372. FERRING B. V. ET AL. *v.* BARR LABORATORIES, INC. C. A. Fed. Cir. Motions of Biotechnology Industry Organization, Pharmaceutical Research and Manufacturers of America, and Washington Legal Foundation for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 437 F. 3d 1181.

No. 06–6516. HOOKS *v.* BANK OF AMERICA. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 183 Fed. Appx. 833.

No. 06–6711. GENAO *v.* UNITED STATES. C. A. 2d Cir. Certiorari before judgment denied.

No. 06–6802. KEELING *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

Rehearing Denied

No. 05–11404. TAYLOR *v.* CHAO, SECRETARY OF LABOR, *ante*, p. 854. Petition for rehearing denied.

NOVEMBER 1, 2006

Certiorari Denied

No. 06–6577 (06A433). JACKSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 181 Fed. Appx. 400.

NOVEMBER 3, 2006

Certiorari Granted

No. 06–5618. CLAIBORNE *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following questions: "(1) Was the District Court's choice of below-Guidelines sentence reasonable? (2) In making that determination, is it consistent with *United States* v. *Booker*, 543 U. S. 220 (2005), to require that a sentence which constitutes a substantial variance from the Guidelines be justified by extraordinary circumstances?" Reported below: 439 F. 3d 479.

No. 06–5754. RITA *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following questions: "(1) Was the District Court's choice of within-Guidelines sentence reasonable? (2) In making that determination, is it consistent with *United States* v. *Booker*, 543 U. S. 220 (2005), to accord a presumption of reasonableness to within-Guidelines sentences? (3) If so, can that presumption justify a sentence imposed without an explicit analysis by the District Court of the 18 U. S C. §3553(a) factors and any other factors that might justify a lesser sentence?" Reported below: 177 Fed. Appx. 357.

NOVEMBER 4, 2006

Miscellaneous Order

No. 06A466. RAY ET AL. *v.* ABBOTT, ATTORNEY GENERAL OF TEXAS, ET AL. Application to vacate the stay entered by the

United States Court of Appeals for the Fifth Circuit on November 3, 2006, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE SOUTER would grant the application to vacate the stay.

NOVEMBER 6, 2006

Miscellaneous Orders

No. 06A355 (06–491). ELLIOT *v.* UNITED STATES. C. A. 9th Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D–2441. IN RE BOZELKO. Ronald F. Bozelko, of Orange, Conn., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on October 10, 2006 [*ante*, p. 949], is discharged.

No. 06M36. SEKENDUR *v.* DENT-A-MED, INC., ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 06M37. MAJLESSI *v.* BILLINGTON, LIBRARIAN OF CONGRESS, ET AL.;

No. 06M38. WILSON *v.* MEYERS ET AL.;

No. 06M39. LEONARDO *v.* UNITED STATES;

No. 06M40. STERKAJ ET UX. *v.* GONZALES, ATTORNEY GENERAL;

No. 06M41. CASEN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS; and

No. 06M42. ROSS *v.* NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 05–908. PARENTS INVOLVED IN COMMUNITY SCHOOLS *v.* SEATTLE SCHOOL DISTRICT NO. 1 ET AL. C. A. 9th Cir. [Certiorari granted, 547 U. S. 1177.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of NAACP Legal Defense & Educational Fund, Inc., for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 05–915. MEREDITH, CUSTODIAL PARENT AND NEXT FRIEND OF MCDONALD *v.* JEFFERSON COUNTY BOARD OF EDUCA-

TION ET AL. C. A. 6th Cir. [Certiorari granted, 547 U. S. 1178.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted, and time is to be divided as follows: 15 minutes for petitioner and 15 minutes for the Solicitor General. Motion of NAACP Legal Defense & Educational Fund, Inc., for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 05–1126. BELL ATLANTIC CORP. ET AL. *v.* TWOMBLY ET AL. C. A. 2d Cir. [Certiorari granted, 548 U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of respondents for divided argument denied.

No. 05–1575. SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* LANDRIGAN, AKA HILL. C. A. 9th Cir. [Certiorari granted, 548 U. S. 941.] Motion of respondent for leave to proceed *in forma pauperis* granted.

No. 06–179. RIEGEL ET UX. *v.* MEDTRONIC, INC. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 06–7071. IN RE MCGUIRE;
No. 06–7082. IN RE ANDREWS;
No. 06–7084. IN RE ADAMS; and
No. 06–7195. IN RE WILLIAMS. Petitions for writs of habeas corpus denied.

No. 06–6269. IN RE HILL. Petition for writ of mandamus denied.

Certiorari Denied

No. 05–8956. TEMPLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 545.

No. 05–9853. WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 901.

No. 05–10008. WASHINGTON *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 280 Kan. 565, 123 P. 3d 1265.

No. 05–10195. MURIETTA-MALDONADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 374.

No. 05–10587. WELCH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 429 F. 3d 702.

No. 05–10634. GUZMAN-BALBUENA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 235.

No. 05–10694. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 254.

No. 05–10948. SHAFER *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 156 Wash. 2d 381, 128 P. 3d 87.

No. 05–11527. OLGUIN-PLASCENCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 617.

No. 06–5. DOREL INDUSTRIES, INC. *v.* SUPERIOR COURT OF CALIFORNIA, SANTA CLARA COUNTY, ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 134 Cal. App. 4th 1267, 36 Cal. Rptr. 3d 742.

No. 06–23. WYOMING *v.* JIMENEZ ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 443 F. 3d 1211.

No. 06–58. MCKEEL *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 60 M. J. 81.

No. 06–155. SCHIANO ET VIR *v.* MBNA CORP. ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–176. CNH AMERICA LLC *v.* YOLTON ET AL.; and
No. 06–201. EL PASO TENNESSEE PIPELINE CO. *v.* YOLTON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 435 F. 3d 571.

No. 06–286. CLANTON *v.* MICHIGAN DEPARTMENT OF TRANSPORTATION ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–298. INDUSTRIAL BANK, N. A. *v.* CITY BANK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 409.

No. 06–299. HEGGER *v.* VISTEON AUTOMOTIVE SYSTEMS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 555.

No. 06–315. HILLSBOROUGH COUNTY, FLORIDA *v.* BURTON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 829.

No. 06–321. BROADNEX *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–336. ROSE'S OIL SERVICE, INC., ET AL. *v.* UNCLE SAM OF '76, INC. App. Ct. Mass. Certiorari denied. Reported below: 66 Mass. App. 200, 846 N. E. 2d 401.

No. 06–358. CAMPBELL ET UX. *v.* RAINBOW CITY, ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 434 F. 3d 1306.

No. 06–373. POWELL *v.* CLARKE, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 711.

No. 06–398. DAVIDSON ET UX. *v.* GROSSMAN ET UX. Ct. App. Ariz. Certiorari denied.

No. 06–404. W. F. H. *v.* FLORIDA BOARD OF BAR EXAMINERS. Sup. Ct. Fla. Certiorari denied. Reported below: 933 So. 2d 482.

No. 06–428. M. A. *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 140 P. 3d 205.

No. 06–431. WIDTFELDT *v.* COUNCIL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT. Sup. Ct. Neb. Certiorari denied. Reported below: 271 Neb. 851, 716 N. W. 2d 68.

No. 06–434. CENTRAL TELEPHONE CO. *v.* TOLSON, SECRETARY, NORTH CAROLINA DEPARTMENT OF REVENUE. Ct. App. N. C. Certiorari denied. Reported below: 174 N. C. App. 554, 621 S. E. 2d 186.

No. 06–442. PAYMAN *v.* SHELBOURNE. C. A. 4th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 282.

No. 06–445. CONTSHIP CONTAINERLINES, LTD. *v.* PPG INDUSTRIES, INC. C. A. 2d Cir. Certiorari denied. Reported below: 442 F. 3d 74.

No. 06–447. CHAUDHARY ET AL. *v.* STEVENS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 204.

No. 06–454. HEGGER *v.* VISTEON AUTOMOTIVE SYSTEMS, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–468. SENTINEL TRUST CO. ET AL. *v.* LAVENDER, COMMISSIONER, TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS. Ct. App. Tenn. Certiorari denied. Reported below: 206 S. W. 3d 501.

No. 06–469. ROBERTSON *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 180 Fed. Appx. 963.

No. 06–491. ELLIOT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 463 F. 3d 858.

No. 06–5021. CALERO-DROUET *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 664.

No. 06–5107. MARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 590.

No. 06–5335. SEPULVADO *v.* LOUISIANA BOARD OF PARDONS AND PAROLE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 470.

No. 06–5719. TREFT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 447 F. 3d 421.

No. 06–6063. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 955.

No. 06–6254. SLOVINEC *v.* AMERICAN UNIVERSITY. C. A. D. C. Cir. Certiorari denied. Reported below: 173 Fed. Appx. 838.

No. 06–6259. MANN *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 06–6261. BOYER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 38 Cal. 4th 412, 133 P. 3d 581.

No. 06–6274. METCALF *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–6282. FORTE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 360 N. C. 427, 629 S. E. 2d 137.

No. 06–6285. LAWSON *v.* LUOMA, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–6294. KARNOFEL *v.* GIRARD POLICE DEPARTMENT ET AL. Ct. App. Ohio, Trumbull County. Certiorari denied.

No. 06–6300. MAY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 587 Pa. 184, 898 A. 2d 559.

No. 06–6305. JOHNSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–6306. MURRAY *v.* CITY OF AKRON, OHIO. C. A. 6th Cir. Certiorari denied.

No. 06–6308. LAKIN *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 899 A. 2d 777.

No. 06–6309. LEPRE *v.* TOLERICO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 156 Fed. Appx. 522.

No. 06–6314. CRUZ ALDAMA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 06–6325. SALAHUDDIN *v.* DENNISON ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–6331. JOHNSON *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 212 Ariz. 425, 133 P. 3d 735.

No. 06–6333. CROSS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 156 Wash. 2d 580, 132 P. 3d 80.

No. 06–6339. DOUGLAS *v.* HOLLINS, SUPERINTENDENT, ONEIDA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 160 Fed. Appx. 55.

No. 06–6362. MESSER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 928 So. 2d 356.

No. 06–6385. BROWN *v.* DILLON ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–6401. PINCKNEY *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–6455. SANTIAGO *v.* WALLS, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 416.

No. 06–6463. HAMILTON *v.* SIRMONS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 436 F. 3d 1181.

No. 06–6480. ALMAHDI *v.* UNITED STATES PAROLE COMMISSION. C. A. D. C. Cir. Certiorari denied.

No. 06–6494. CENSKE *v.* CALHOUN COUNTY JAIL ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–6508. SIEGFRIED *v.* ARIZONA. Super. Ct. Ariz., County of Yavapai. Certiorari denied.

No. 06–6519. SIMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 904.

No. 06–6538. ERICKSON *v.* ADMINISTRATIVE OFFICE OF THE TRIAL COURT OF MASSACHUSETTS ET AL. C. A. 1st Cir. Certiorari denied.

No. 06–6556. DRIVER *v.* OHIO. Ct. App. Ohio, Mahoning County. Certiorari denied.

No. 06–6588. KRIKORIAN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 930 So. 2d 628.

No. 06–6614. PEGUESE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 207.

No. 06–6622. BURKE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–6631. RAY *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 640.

No. 06–6632. SMITH *v.* RABION. C. A. 11th Cir. Certiorari denied.

No. 06–6633. RANSOME *v.* SOBINA, SUPERINTENDENT, FOREST STATE CORRECTIONAL INSTITUTION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–6634. SIEROTOWICZ *v.* NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS. C. A. 2d Cir. Certiorari denied.

No. 06–6673. GLADDEN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 176 N. C. App. 190, 625 S. E. 2d 916.

No. 06–6679. STILLEY *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 182.

No. 06–6682. LOVE *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 232.

No. 06–6694. PAYNE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–6700. WALKER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–6702. WILSON *v.* POLLARD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–6706. GONZALEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 195 S. W. 3d 114.

No. 06–6730. ABRAHAM *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–6748. FOUNTAIN *v.* NEBRASKA. Ct. App. Neb. Certiorari denied.

No. 06–6828. BURNSED *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 934 So. 2d 456.

No. 06–6830. SPRATT *v.* WALL, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 188 Fed. Appx. 562.

No. 06–6851. T. D. *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 140 P. 3d 205.

No. 06–6887. GRAHAM *v.* KOERNER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 06–6896. JOHNSON *v.* PEP BOYS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 385.

No. 06–6968. HATTRICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 649.

No. 06–6970. MONTENEGRO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 186 Fed. Appx. 16.

No. 06–6976. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 450 F. 3d 366.

No. 06–6980. BAKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–6983. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 230.

No. 06–6986. BURGARA-MONTANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 695.

No. 06–6993. OAKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 298.

No. 06–6994. LEYVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 340.

No. 06–6995. MAHER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 454 F. 3d 13.

No. 06–7000. REINHOLD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 452 F. 3d 1140.

No. 06–7001. MARTINEZ RUIZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7004. ESCOBAR-FIGUEROA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 454 F. 3d 40.

No. 06–7007. JARDINE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 728.

No. 06–7008. CEDILLOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 322.

No. 06–7009. WRIGHT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 621.

No. 06–7015. CERVANTES-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 632.

No. 06–7016. BENDER *v.* O'BRIEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7018. SOLORIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 631.

No. 06–7022. PRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 201.

No. 06–7024. MCKINNEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 563.

No. 06–7034. LOTT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 188 Fed. Appx. 13.

No. 06–7035. KASSIMU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 264.

No. 06–7036. MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 455 F. 3d 1127.

No. 06–7039. QUINTANILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 490.

No. 06–7040. RAMIREZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 412.

No. 06–7041. SAUCEDA-CUELLAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 373.

No. 06–7043. DUBLIN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 151.

No. 06–7044. CLAUDIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 365.

No. 06–7047. MAULDIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 785.

No. 06–7051. ALVARADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 385.

No. 06–7069. MORIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 709.

No. 06–7070. NATION *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7077. TORRES-REGALADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 381.

No. 06–7078. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 852.

No. 06–7081. BOONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 215.

No. 06–7085. ABOUSHI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–7091. MURPHY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 218.

No. 06–152. R & F PROPERTIES OF LAKE COUNTY, INC. *v.* WALKER. C. A. 11th Cir. Motions of Washington Legal Foundation and Pharmaceutical Research and Manufacturers of America for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 433 F. 3d 1349.

No. 06–287. AYERS, ACTING WARDEN *v.* CLARK. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 450 F. 3d 898.

No. 06–6276. MOORE *v.* SIMPSON, WARDEN. C. A. 6th Cir. Motions of Rutherford Institute and National Association of Social Workers et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 425 F. 3d 250.

Rehearing Denied

No. 05–10371. GAITAN *v.* CONAGRA BEEF CO. ET AL., 547 U. S. 1209;

No. 05–11211. IN RE TAYLOR, *ante*, p. 808;

No. 06–53. JONES *v.* BURNSIDE, JUDGE, COURT OF COMMON PLEAS, CUYAHOGA COUNTY, OHIO, ET AL., *ante*, p. 883;

No. 06–5028. ZIED-CAMPBELL *v.* PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, *ante*, p. 892; and

No. 06–5032. RIES *v.* UNITED STATES, *ante*, p. 892. Petitions for rehearing denied.

NOVEMBER 8, 2006

Certiorari Denied

No. 06–6397 (06A435). SHANNON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 177 Fed. Appx. 431.

NOVEMBER 9, 2006

Certiorari Denied

No. 06–7032 (06A365). SCHMITT *v.* KELLY, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 189 Fed. Appx. 257.

NOVEMBER 13, 2006

Certiorari Dismissed

No. 06–6492. KEELEN *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 06A471. MOHAMMED ET AL. *v.* HARVEY, SECRETARY OF THE ARMY, ET AL. C. A. D. C. Cir. Application for temporary injunctive relief, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. 06M43. SIMS *v.* SNEDEKER, WARDEN;

No. 06M44. ELBERSON *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL.;

No. 06M45. BARRITT *v.* MCBRIDE, WARDEN; and

No. 06M46. VINTON *v.* MARSHALL, ACTING SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT CEDAR JUNCTION. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 04–1350. KSR INTERNATIONAL CO. *v.* TELEFLEX INC. ET AL. C. A. Fed. Cir. [Certiorari granted, 548 U. S. 902.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–1074. LEDBETTER *v.* GOODYEAR TIRE & RUBBER CO., INC. C. A. 11th Cir. [Certiorari granted, 548 U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–1120. MASSACHUSETTS ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. D. C. Cir. [Certiorari granted, 548 U. S. 903.] Motion of respondents Alliance of Automobile Manufacturers et al. for divided argument denied.

No. 05–1272. ROCKWELL INTERNATIONAL CORP. ET AL. *v.* UNITED STATES ET AL. C. A. 10th Cir. [Certiorari granted, 548 U. S. 941.] Motion of the Solicitor General for divided argument granted. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 05–1342. WATTERS, COMMISSIONER, MICHIGAN OFFICE OF FINANCIAL AND INSURANCE SERVICES *v.* WACHOVIA BANK, N. A., ET AL. C. A. 6th Cir. [Certiorari granted, 547 U. S. 1205.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE THOMAS took no part in the consideration or decision of this motion.

No. 05–10999. JONES *v.* SOUTH CAROLINA. Sup. Ct. S. C. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 05–11284. ABDUL-KABIR, FKA COLE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; and

No. 05–11287. BREWER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. [Certiorari granted, *ante*, p. 974.] Motions of petitioners for appointment of counsel granted. Robert C. Owen, Esq., of Austin, Tex., is appointed to serve as counsel for petitioners in these cases.

No. 05–11304. SMITH *v.* TEXAS. Ct. Crim. App. Tex. [Certiorari granted, *ante*, p. 948.] Motion of petitioner for appointment of counsel granted. Jordan Steiker, Esq., of Austin, Tex., is appointed to serve as counsel for petitioner in this case.

No. 05–11550. NWACHUKWU *v.* KARL. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 807] denied.

No. 05–11604. NWACHUKWU *v.* ROONEY ET AL. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 807] denied.

No. 06–5673. WEBB *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 06–6867. IN RE DUNCAN. Petition for writ of habeas corpus denied.

No. 06–6367. IN RE BRAVO;
No. 06–6371. IN RE BLUMEYER; and
No. 06–6501. IN RE STEWART. Petitions for writs of mandamus denied.

Certiorari Denied

No. 05–1598. TOKIO MARINE & FIRE INSURANCE CO., LTD. *v.* ITO. C. A. 9th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 932.

No. 06–44. TIMKEN U. S. CORP. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 434 F. 3d 1345.

No. 06–52. SKAKEL *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 276 Conn. 633, 888 A. 2d 985.

No. 06–114. JONES *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 436 F. 3d 1285.

No. 06–160. MCCLAIN ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 444 F. 3d 556.

No. 06–197. MCGLADREY & PULLEN, LLP *v.* NORTH CAROLINA STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS. Sup. Ct. N. C. Certiorari denied. Reported below: 360 N. C. 399, 627 S. E. 2d 461.

No. 06–324. BLUE CROSS BLUE SHIELD OF MICHIGAN *v.* GENORD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 440 F. 3d 802.

No. 06–326. JACKSON ET AL. *v.* GLENAYRE ELECTRONICS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 443 F. 3d 851.

No. 06–328. CARNEY ET AL. *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 295.

No. 06–332. BROWN *v.* DEKALB COUNTY, GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 276 Ga. App. 851, 625 S. E. 2d 16.

No. 06–335. DOUGIA *v.* GRAVES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 438.

No. 06–337. KNOCHELMANN *v.* BJELLAND ET AL. Ct. App. Ky. Certiorari denied.

No. 06–343. QWEST COMMUNICATIONS INTERNATIONAL INC. *v.* NEW ENGLAND HEALTH CARE EMPLOYEES PENSION FUND ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 450 F. 3d 1179.

No. 06–346. UNIVERSAL COMPUTER SYSTEMS, INC., ET AL. *v.* DEALER SOLUTIONS, L. L. C., ET AL. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 183 S. W. 3d 741.

No. 06–347. SIBLEY *v.* FLORIDA JUDICIAL QUALIFICATIONS COMMISSION. Sup. Ct. Fla. Certiorari denied. Reported below: 973 So. 2d 425.

No. 06–350. HURD *v.* ALEXANDER ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 06–351. GUTTMAN *v.* WIDMAN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE NEW MEXICO SUPREME COURT DISCIPLINARY BOARD, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 691.

No. 06–355. MILLIGAN *v.* CITY OF CHANDLER, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 7.

No. 06–356. KING *v.* CONNECTICUT. C. A. 2d Cir. Certiorari denied. Reported below: 158 Fed. Appx. 350.

No. 06–361. WALTON *v.* TESUQUE PUEBLO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 443 F. 3d 1274.

No. 06–362. D. T. B., A MINOR CHILD, BY HIS NEXT FRIEND, O'CALLAGHAN, ET AL. *v.* FARMER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 187 Fed. Appx. 191.

No. 06–386. McRae *v.* Berger. C. A. 11th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 758.

No. 06–391. Graham *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 06–426. Del Monte Fresh Produce Co. et al. *v.* Villeda Aldana et al. C. A. 11th Cir. Certiorari denied. Reported below: 416 F. 3d 1242.

No. 06–430. Bell *v.* Georgia Building Co. C. A. 11th Cir. Certiorari denied.

No. 06–436. Wagers *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 452 F. 3d 534.

No. 06–474. Goldberg, Director, Oregon Department of Human Services, et al. *v.* Watson et al. C. A. 9th Cir. Certiorari denied. Reported below: 436 F. 3d 1152.

No. 06–501. Rowlands *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 451 F. 3d 173.

No. 06–505. Mayer *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 171 Fed. Appx. 968.

No. 06–507. Williams *v.* Waldrep et al. C. A. 11th Cir. Certiorari denied.

No. 06–508. Vaughan Co., Inc. *v.* Liquid Dynamics Corp. C. A. Fed. Cir. Certiorari denied. Reported below: 449 F. 3d 1209.

No. 06–519. Communication Bridge Global, Inc. *v.* Chow. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 06–521. Rosby et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 454 F. 3d 670.

No. 06–522. Spilmon et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 454 F. 3d 657.

No. 06–5251. Gourde *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 440 F. 3d 1065.

No. 06–5261. Johnson *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 06–5289. NEWBORN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5431. GAUTHIER *v.* HIGGINS, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 06–5538. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–5541. PUZEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 304.

No. 06–5543. HUMPHREY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5554. YOUNG *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 435 F. 3d 1038.

No. 06–5587. OLWOCH *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 702.

No. 06–5611. WOODLEN *v.* JIMINEZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 168.

No. 06–5698. YOUNGBLOOD *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 06–5743. MOSS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–5808. HOLIDAY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–5852. HINTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 37 Cal. 4th 839, 126 P. 3d 981.

No. 06–5856. REMY *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 06–5921. LOGAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 434 F. 3d 503.

No. 06–5927. SKELTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–5995. BETANCOURT *v.* BLOOMBERG, MAYOR OF THE CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 448 F. 3d 547.

No. 06–6195. WHITE *v.* HOUK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 431 F. 3d 517.

No. 06–6320. TRUSSELL *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 447 F. 3d 588.

No. 06–6321. JOHNSON *v.* MATKIN. C. A. 5th Cir. Certiorari denied.

No. 06–6324. ROBERSON *v.* HOLY CROSS CHILDREN'S SERVICES. C. A. 6th Cir. Certiorari denied.

No. 06–6334. MONEY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6342. WORTHEN *v.* PARKER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 835.

No. 06–6350. CARLISLE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 280 Ga. 770, 631 S. E. 2d 347.

No. 06–6355. CALVO *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–6357. DAVENPORT *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–6360. BECK *v.* FEEHAN ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–6363. ANDERSON *v.* SOLOMAN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 900.

No. 06–6364. BRANT *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–6372. BOETTNER *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 06–6380. BORESS *v.* REYNOLDS ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–6387. COLLINS *v.* NORWOOD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–6392. JONES *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 06–6396. SMITH *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 931 So. 2d 790.

No. 06–6402. PURVIS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 451 F. 3d 734.

No. 06–6410. SCHOENWETTER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 931 So. 2d 857.

No. 06–6418. MILLEN *v.* TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT. Ct. App. Tenn. Certiorari denied. Reported below: 205 S. W. 3d 939.

No. 06–6424. JACKSON *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 06–6426. VIOLA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–6430. ANDREWS *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 675.

No. 06–6434. AINSWORTH *v.* ANDERSON ET AL. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 920 So. 2d 270.

No. 06–6447. LEVERTON *v.* POPE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 100 Fed. Appx. 263.

No. 06–6450. BADWI *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 666.

No. 06–6456. STANFORD *v.* SMITH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–6459. HARRIS *v.* GLADES CORRECTIONAL INSTITUTION. C. A. 11th Cir. Certiorari denied.

No. 06–6464. GILES *v.* SCHOTTEN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 449 F. 3d 698.

No. 06–6466. MOORE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 329.

No. 06–6469. DASISA *v.* HOWARD UNIVERSITY. C. A. D. C. Cir. Certiorari denied. Reported below: 179 Fed. Appx. 702.

No. 06–6471. LITTLE *v.* CITY OF CHICAGO COMMISSION ON HUMAN RELATIONS ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 359 Ill. App. 3d 1190, 904 N. E. 2d 1238.

No. 06–6472. LAMB *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 06–6474. JOHNSON *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 06–6476. BOYD *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–6477. BARCLAY *v.* RAMIREZ-PALMER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6478. BROWN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6479. ABDI *v.* HATCH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 450 F. 3d 334.

No. 06–6481. DANIEL L. *v.* GRANT ET UX. Sup. Ct. Alaska. Certiorari denied. Reported below: 140 P. 3d 886.

No. 06–6482. BACON *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 903 A. 2d 322.

No. 06–6484. SCHUSTER *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–6485. LEE *v.* CROUSE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 451 F. 3d 598.

No. 06–6489. HERNANDEZ *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 657.

No. 06–6490. FULTON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 24 App. Div. 3d 959, 807 N. Y. S. 2d 153.

No. 06–6493. DROHAN *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 475 Mich. 140, 715 N. W. 2d 778.

No. 06–6497. SINE *v.* BANK OF NEW YORK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 930.

No. 06–6502. REEDER *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 06–6509. VLASICH *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6514. SCOTT *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 06–6515. WINTERS *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 186.

No. 06–6533. JOHNICO *v.* CHRONES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 701.

No. 06–6542. BURLISON *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 06–6552. PRYCE *v.* GONZALES, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 06–6558. COLLINS *v.* BEAVER, SUPERINTENDENT, ORLEANS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–6566. RESTREPO *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 926.

No. 06–6581. VARON *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 830.

No. 06–6585. BARTLETT *v.* BATTAGLIA, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 453 F. 3d 796.

No. 06–6610. WHEELER *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 719 N. W. 2d 384.

No. 06–6624. ABNEY *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 06–6680. SABEDRA *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 06–6738. WIELAND *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 848 N. E. 2d 679.

No. 06–6739. KAAKE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–6745. CHAYOON *v.* FOXWOODS RESORT CASINO ET AL. C. A. 1st Cir. Certiorari denied.

No. 06–6751. HANEI *v.* STERNES, WARDEN. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 361 Ill. App. 3d 1097, 911 N. E. 2d 10.

No. 06–6764. LATHAM *v.* ALASKA PUBLIC DEFENDER AGENCY ET AL. Sup. Ct. Alaska. Certiorari denied.

No. 06–6768. JAMES *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–6796. HORNE *v.* DENNY'S RESTAURANT. C. A. 8th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 13.

No. 06–6798. MORRIS *v.* POWELL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 449 F. 3d 682.

No. 06–6814. GIBSON *v.* GIBSON. Sup. Ct. N. H. Certiorari denied.

No. 06–6836. BRIDGEWATER *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–6841. DAVIS *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 599.

No. 06–6847. SAUNDERS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 38 Cal. 4th 1129, 136 P. 3d 859.

No. 06–6873. DUNCAN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–6878. SPERRY *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 445 F. 3d 1268.

No. 06–6910. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 938.

No. 06–6935. THORNTON *v.* WALL, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied.

No. 06–6949. VALENTINE *v.* BURGESS. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 797.

No. 06–6955. SARK *v.* FEDERAL HOME LOAN MORTGAGE CORP. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 06–6963. EGGERS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA; and EGGERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6973. MATTHEWS *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 172 Fed. Appx. 1007.

No. 06–6981. BERRY *v.* MCBRIDE, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 06–7049. BRISTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 192 Fed. Appx. 84.

No. 06–7050. BROWN *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR. C. A. 10th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 590.

No. 06–7061. MCGRATH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–7065. SCHWEITZER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 454 F. 3d 197.

No. 06–7066. SANDOVAL-RODRIGUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 452 F. 3d 984.

No. 06–7068. MCPHERSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–7073. GARCIA-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 653.

No. 06–7074. FLOREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 447 F. 3d 145.

No. 06–7075. GARY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 453 F. 3d 876.

No. 06–7079. ANDREWS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 899 A. 2d 138.

No. 06–7080. BURSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–7083. BLACKWELL *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–7087. BONSU *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7088. BRUCE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7090. TORRES-LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 290.

No. 06–7092. RICE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 449 F. 3d 887.

No. 06–7096. FEDERMANN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 240.

No. 06–7097. GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 325.

No. 06–7098. GATES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 461 F. 3d 703.

No. 06–7100. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 454 F. 3d 459.

No. 06–7108. GARCIA-FALCON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 379.

No. 06–7111. STUBBS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 697.

No. 06–7113. RIVAS-ROSAS *v.* UNITED STATES (Reported below: 189 Fed. Appx. 337); ROBLES-CHAVEZ *v.* UNITED STATES (189 Fed. Appx. 332); TRETO-BERNAL, AKA TRETO BERNAL, AKA TRETO *v.* UNITED STATES (190 Fed. Appx. 365); ZAVALZA-PLANTILLAS, AKA PLANTILLAS, AKA ZAVALA-PLANTILLAS *v.* UNITED STATES (181 Fed. Appx. 492); and GARCIA-GONZALEZ *v.* UNITED STATES (190 Fed. Appx. 382). C. A. 5th Cir. Certiorari denied.

No. 06–7114. BROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 284.

No. 06–7118. MARTINEZ-POLIN *v.* UNITED STATES (Reported below: 189 Fed. Appx. 325); MARQUEZ-TARANGO, AKA TRUJILLO-CHAVEZ *v.* UNITED STATES (189 Fed. Appx. 326); MENDOZA-CHAVEZ, AKA QUIRARTE, AKA CABRERA-MONTALVO *v.* UNITED STATES (188 Fed. Appx. 321); NAVARETTE-CASTILLO, AKA CASTILLO-NAVARETTE *v.* UNITED STATES (189 Fed. Appx. 336); PERCHES-ESCAMILLA *v.* UNITED STATES (191 Fed. Appx. 259); and NAVARETTE-ZAVALA *v.* UNITED STATES (181 Fed. Appx. 495). C. A. 5th Cir. Certiorari denied.

No. 06–7120. SAENZ-CHAPA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 364.

No. 06–7122. BAHENA-BAHENA *v.* UNITED STATES (Reported below: 189 Fed. Appx. 338); CABALLERO-VALDIVIA *v.* UNITED STATES (181 Fed. Appx. 497); DOMINGUEZ-NEVAREZ, AKA CORRAL-LOYA *v.* UNITED STATES (181 Fed. Appx. 478); FRAUSTO-GARIBAY, AKA GONZALEZ *v.* UNITED STATES (189 Fed. Appx. 322); HERRERA-LLANAS, AKA NARRO *v.* UNITED STATES (190 Fed. Appx. 374); LARA-VALDEZ, AKA SOZA-MACEDO *v.* UNITED STATES

(189 Fed. Appx. 334); and LARIOS-BADOS *v.* UNITED STATES (189 Fed. Appx. 327). C. A. 5th Cir. Certiorari denied.

No. 06–7123. AGUILERA-ROSAS *v.* UNITED STATES (Reported below: 181 Fed. Appx. 483); ARREOLA-GARCIA *v.* UNITED STATES (193 Fed. Appx. 283); BARRIOS DE LA TORRE *v.* UNITED STATES (181 Fed. Appx. 476); ESCARCEGA-BRIONES, AKA MACIAS *v.* UNITED STATES (182 Fed. Appx. 389); ESQUIVEL-PACHECO *v.* UNITED STATES (189 Fed. Appx. 323); LOPEZ-BENITEZ *v.* UNITED STATES (181 Fed. Appx. 478); MARTINEZ-NAVARRETE *v.* UNITED STATES (181 Fed. Appx. 477); MINERO-MENDEZ *v.* UNITED STATES (189 Fed. Appx. 323); MUNOZ-MARTINEZ *v.* UNITED STATES (189 Fed. Appx. 350); PEREZ *v.* UNITED STATES (188 Fed. Appx. 321); QUINTANA-RODRIGUEZ *v.* UNITED STATES (188 Fed. Appx. 322); REYES-ROCHA, AKA REYES ROCHA *v.* UNITED STATES (181 Fed. Appx. 475); SANDOVAL-TINAJERO *v.* UNITED STATES (181 Fed. Appx. 499); SOTO-RUBIO *v.* UNITED STATES (182 Fed. Appx. 389); VARELA-MARQUEZ *v.* UNITED STATES (190 Fed. Appx. 375); and VELASQUES-ROJAS, AKA VELASQUEZ-ROJAS *v.* UNITED STATES (182 Fed. Appx. 388). C. A. 5th Cir. Certiorari denied.

No. 06–7126. GUNDY *v.* UNITED STATES (Reported below: 189 Fed. Appx. 331); and KAVANAUGH *v.* UNITED STATES (181 Fed. Appx. 491). C. A. 5th Cir. Certiorari denied.

No. 06–7127. GONZALEZ-MERCADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 324.

No. 06–7128. GRESHAM *v.* VASQUEZ, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–7131. HAZEL *v.* SMITH, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 190 Fed. Appx. 137.

No. 06–7134. GAMBOA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 439 F. 3d 796.

No. 06–7135. HOWELL *v.* BEZY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 416.

No. 06–7136. FELTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 64.

No. 06–7137. FREEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 953.

No. 06–7142. SILVA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 698.

No. 06–7145. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 921.

No. 06–7146. LOPEZ-AGUIRRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 482.

No. 06–7148. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7151. CHANDLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 261.

No. 06–7154. REDDICK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 817.

No. 06–7155. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 228.

No. 06–7157. NEGRON-ROSARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–7158. MILES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 184 Fed. Appx. 222.

No. 06–7159. MORGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 804.

No. 06–7161. JARRETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 447 F. 3d 520.

No. 06–7162. LULE-GANTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 378.

No. 06–7163. KING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–7164. ENDSLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 354.

No. 06–7165. DEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7166. ESPINOZA-URRUTIA, AKA URIOSTEGUI, AKA BUSTMANT URIOSTEGUI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 384.

No. 06–7167. DAVIDSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 449 F. 3d 849.

No. 06–7168. ESTRADA-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 477.

No. 06–7169. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 291.

No. 06–7170. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–7172. VALENZUELA-VILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 481.

No. 06–7173. ROMERO-CANDELARIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 149.

No. 06–7174. SAULS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 298.

No. 06–7175. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 842.

No. 06–7178. GONZALEZ-NOYOLA, AKA GONZALEZ-LOYOLA, AKA NOYOLA GONZALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 690.

No. 06–7179. MILLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7180. SMALL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 765.

No. 06–7181. KRAKLIO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 451 F. 3d 922.

No. 06–7185. SPAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 487.

No. 06–7198. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 453 F. 3d 777.

No. 06–7200. STEVENS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 453 F. 3d 963.

No. 06–7201. SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 284.

No. 06–7202. LOPEZ-RODRIGUEZ, AKA VASQUEZ, AKA VASQUEZ-NOVO *v.* UNITED STATES (Reported below: 189 Fed. Appx. 335); NELSON-TAITT, AKA LOWE, AKA NELSON *v.* UNITED STATES (191 Fed. Appx. 260); RAMOS-VILLA *v.* UNITED STATES (182 Fed. Appx. 383); and SALINAS-PORCAYO, AKA SALINAS *v.* UNITED STATES (190 Fed. Appx. 366). C. A. 5th Cir. Certiorari denied.

No. 06–7203. VILLASENOR-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 671.

No. 06–7206. CASTRO-MURO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 585.

No. 06–7207. ARHEBAMEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 461.

No. 06–7209. MARTINEZ-ALVARADO *v.* UNITED STATES (Reported below: 190 Fed. Appx. 567); LOPEZ-ORTIZ *v.* UNITED STATES (190 Fed. Appx. 566); RODRIGUEZ-SALCIDO *v.* UNITED STATES; and CASTILLO-HIDALGO *v.* UNITED STATES (190 Fed. Appx. 559). C. A. 9th Cir. Certiorari denied.

No. 06–7210. BROCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 279.

No. 06–7215. BERALDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 685.

No. 06–7216. BEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 179 Fed. Appx. 144.

No. 06–7217. AVILA-MIRANDA, AKA MIRANDA-AVILA, AKA AMAYO COCA *v.* UNITED STATES (Reported below: 181 Fed. Appx. 479); BUSTAMANTE-FLORES *v.* UNITED STATES (190 Fed. Appx. 374); ESTRADA-TRUJILLO, AKA ROMERO-GRANADOS, AKA UBALDO ROMERO *v.* UNITED STATES (189 Fed. Appx. 351); FLORES-GARZA, AKA GARZA-LOPEZ *v.* UNITED STATES (189 Fed. Appx. 327); GARCIA *v.* UNITED STATES (189 Fed. Appx. 324); GOMEZ-ARMENTA *v.* UNITED STATES (189 Fed. Appx. 333); GOMEZ-RUELAS *v.* UNITED STATES (189 Fed. Appx. 351); GUERRA-HERNANDEZ *v.* UNITED STATES (189 Fed. Appx. 329); GUZMAN-FLORIANO, AKA GONZALES *v.* UNITED STATES (188 Fed. Appx. 314); MIRANDA-VALENCIA *v.* UNITED STATES (189 Fed. Appx. 334); MONAREZ-QUINTERO *v.* UNITED STATES (188 Fed. Appx. 322); PORCAYO-JARAMILLO *v.*

UNITED STATES (189 Fed. Appx. 336); RAMIREZ-RICO, AKA LOPEZ-RAMIREZ *v.* UNITED STATES (181 Fed. Appx. 476); RODRIGUEZ *v.* UNITED STATES (181 Fed. Appx. 498); VALENZUELA-RIVERA, AKA RIVERA-CALDERA *v.* UNITED STATES (190 Fed. Appx. 372); VILLAREAL-MAGALLANEZ, AKA MAGALLANE *v.* UNITED STATES (189 Fed. Appx. 352); and ZACARIAS-AMADOR *v.* UNITED STATES (190 Fed. Appx. 375). C. A. 5th Cir. Certiorari denied.

No. 06–7219. ALDAPE-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 379.

No. 06–7220. ANDINO-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 482.

No. 06–7228. GONZALEZ-CARVAJAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 666.

No. 06–7229. GARRITY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 431.

No. 06–7230. FIELDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 3d 519.

No. 06–7231. FLORES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 454 F. 3d 149.

No. 06–7235. HARTZOG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 340.

No. 06–7237. GARCIA-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 391.

No. 06–7238. GONZALEZ-VENEGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 383.

No. 06–7240. GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 706.

No. 06–7241. GARZA-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 480.

No. 06–7242. FAUST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 456 F. 3d 1342.

No. 06–7244. MASTERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–7246. DAWSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–7250. COLEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 383.

No. 06–7252. SINGLETARY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 458 F. 3d 72.

No. 06–7255. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 461 F. 3d 441.

No. 06–7256. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 205.

No. 06–128. HOUK, WARDEN *v.* WHITE. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 431 F. 3d 517.

No. 06–144. BASF CORP. *v.* PETERSON ET AL. Sup. Ct. Minn. Motions of Chamber of Commerce of the United States of America, CropLife America, and Product Liability Advisory Council, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied.

No. 06–213. PERDUE *v.* BROWN ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 177 Fed. Appx. 121.

No. 06–331. WISE ET UX. *v.* WACHOVIA SECURITIES, LLC. C. A. 7th Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 450 F. 3d 265.

No. 06–6370. BERRYHILL *v.* EVANS. C. A. 10th Cir. Certiorari before judgment denied.

No. 06–6454. DASISA *v.* UNIVERSITY OF MASSACHUSETTS ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

Rehearing Denied

No. 03–5680. ALSTON *v.* FLORIDA INSURANCE GUARANTY ASSN., 540 U. S. 952;

No. 05–1446. SMITH *v.* AMERICAN ARBITRATION ASSN., INC., *ante*, p. 814;

No. 05–10917. BARNETT *v.* AYERS, ACTING WARDEN, *ante*, p. 835;

No. 05–11005. ALVAREZ ACUNA *v.* LOCAL 408 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ET AL., *ante*, p. 838;

No. 05–11006. ALVAREZ ACUNA *v.* MEL CLAYTON FORD, INC., ET AL., *ante*, p. 838;

No. 05–11087. WILCOX *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 841;

No. 05–11173. WILLIAMS *v.* UPTON, WARDEN, *ante*, p. 844;

No. 05–11216. IN RE HOWARD, *ante*, p. 808;

No. 05–11370. SILER *v.* UNITED STATES, *ante*, p. 852;

No. 05–11393. SMITH *v.* UNITED STATES ET AL., *ante*, p. 853;

No. 05–11454. WILSON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, *ante*, p. 857;

No. 05–11456. MOATS *v.* COOKE, WARDEN, ET AL., *ante*, p. 857;

No. 05–11577. KIM ET AL. *v.* KIA MOTORS AMERICA, *ante*, p. 865;

No. 05–11631. JACKSON *v.* UNITED STATES, *ante*, p. 868;

No. 05–11700. PEKER *v.* FADER ET AL., *ante*, p. 872;

No. 05–11824. CARR *v.* DWYER, SUPERINTENDENT, SOUTHEAST CORRECTIONAL CENTER, *ante*, p. 879;

No. 06–5417. KIRSCHENHUNTER *v.* BEAUREGARD PARISH SHERIFF'S OFFICE ET AL., *ante*, p. 913;

No. 06–5639. MATHISON *v.* UNITED STATES, *ante*, p. 925;

No. 06–5775. IN RE BORZYCH, *ante*, p. 808; and

No. 06–6051. WILLIAMS *v.* UNITED STATES, *ante*, p. 938. Petitions for rehearing denied.

No. 05–10931. ALLEN *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL., *ante*, p. 944. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

NOVEMBER 27, 2006

Certiorari Granted—Vacated and Remanded

No. 05–1424. METROPOLITAN LIFE INSURANCE CO. *v.* HAWKINS-DEAN. C. A. 9th Cir. Motion of American Council of

Life Insurers for leave to file a brief as *amicus curiae* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Abatie* v. *Alta Health & Life Ins. Co.*, 458 F. 3d 955 (CA9 2006) (en banc). Reported below: 161 Fed. Appx. 684.

Certiorari Dismissed

No. 06–6784. ADAMS *v.* MISSOURI. Ct. App. Mo., Western Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 193 S. W. 3d 306.

No. 06–6991. AZUBUKO *v.* ZOBEL, JUDGE, UNITED STATES DISTRICT COURT OF MASSACHUSETTS, ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 179 Fed. Appx. 136.

Miscellaneous Orders

No. 06A252 (06–6644). ANDREWS *v.* MOORE ET AL. C. A. 4th Cir. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. 06A525. NEW YORK TIMES CO. *v.* GONZALES, ATTORNEY GENERAL, ET AL. Application for stay of mandate of the United States Court of Appeals for the Second Circuit pending the filing and disposition of a petition for writ of certiorari, presented to JUSTICE GINSBURG, and by her referred to the Court, denied.

No. D–2431. IN RE DISBARMENT OF MITCHELL. Disbarment entered. [For earlier order herein, see 548 U. S. 929.]

No. 06M47. SANTOS *v.* MITCHELL-YOUNG ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 06M48. IN RE GRAND JURY PROCEEDINGS. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 06M49. OSTOPOSIDES ET AL. *v.* GLIMP ET AL. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioners denied.

No. 05–10924. IN SOO CHUN *v.* HOUSING AUTHORITY OF SEATTLE. Sup. Ct. Wash. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 06–595. HARPER, A MINOR, BY AND THROUGH HIS PARENTS HARPER ET UX., ET AL. *v.* POWAY UNIFIED SCHOOL DISTRICT ET AL. C. A. 9th Cir. Motion of petitioners to expedite consideration of petition for writ of certiorari denied.

No. 06–5057. ATAMIAN *v.* NGUYEN. Sup. Ct. Del. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 06–5813. IN RE ATAMIAN. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 951] denied.

No. 06–5817. JONES *v.* SALEEBY ET AL. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 06–6872. CHERRY *v.* POTTER, POSTMASTER GENERAL. C. A. 2d Cir.; and

No. 06–7076. FINKELSTEIN *v.* SPITZER, ATTORNEY GENERAL OF NEW YORK. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 18, 2006, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 06–565. IN RE JOHNSON;

No. 06–7445. IN RE SKILLERN;

No. 06–7458. IN RE POWELL;

No. 06–7460. IN RE LEGREE; and

No. 06–7568. IN RE BENNETT. Petitions for writs of habeas corpus denied.

No. 06–397. IN RE DAVIDSON ET UX.; and

No. 06–6623. IN RE BROWN. Petitions for writs of mandamus denied.

No. 06–437. IN RE MAYS;

No. 06–6880. IN RE SANDERS-BEY; and

No. 06–7295. IN RE MCGEE. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied

No. 05–1605. BAQIR *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. 4th Cir. Certiorari denied. Reported below: 434 F. 3d 733.

No. 05–11632. CHEN WEI REN *v.* SHERMAN, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 165 Fed. Appx. 235.

No. 05–11729. BUENROSTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 524.

No. 06–72. APPEL *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 175.

No. 06–87. MORGAN *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 292.

No. 06–132. ANDERSON ET AL. *v.* TOWN OF DURHAM, MAINE, ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 895 A. 2d 944.

No. 06–142. BASSIOUNI *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. 7th Cir. Certiorari denied. Reported below: 436 F. 3d 712.

No. 06–231. CITIZENS FINANCIAL SERVICES, FSB, FKA CITIZENS FEDERAL SAVINGS & LOAN ASSN. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 170 Fed. Appx. 129.

No. 06–242. MINING AND MINERALS DIVISION OF THE ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT OF NEW MEXICO ET AL. *v.* MANNING ET AL. Sup. Ct. N. M. Certiorari denied. Reported below: 140 N. M. 528, 144 P. 3d 87.

No. 06–267. GOVERNMENT OF TURKMENISTAN *v.* BRIDAS S. A. P. I. C. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 447 F. 3d 411.

No. 06–268. PORT AUTHORITY OF ALLEGHENY COUNTY *v.* STANGL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 181 Fed. Appx. 231.

No. 06–280. VENTURA COUNTY, CALIFORNIA *v.* WAY. C. A. 9th Cir. Certiorari denied. Reported below: 445 F. 3d 1157.

No. 06–309. FLORIDA *v.* RABB. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 920 So. 2d 1175.

No. 06–365. BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–371. COUNCIL OF INDEPENDENT TOBACCO MANUFACTURERS OF AMERICA *v.* MINNESOTA ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 713 N. W. 2d 300.

No. 06–374. HOLLOWAY *v.* WOHLFAHRT ET UX. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 172 S. W. 3d 630.

No. 06–379. WAGNER *v.* BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 913 So. 2d 893.

No. 06–381. KNIATT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 206 S. W. 3d 657.

No. 06–382. BUNDY ET AL. *v.* BOARD ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–385. MCALLISTER ET AL. *v.* GONZALES, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 444 F. 3d 178.

No. 06–388. WILLIS *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 915 So. 2d 365.

No. 06–390. ROSSI *v.* UNION OF NEEDLETRADES, INDUSTRIAL & TEXTILE EMPLOYEES, AFL–CIO, CLC. C. A. 6th Cir. Certiorari denied.

No. 06–392. HENDERSON *v.* SONY PICTURES ENTERTAINMENT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–395. GROSS *v.* IRTZ, ADMINISTRATOR OF GROSS. Cir. Ct. Fayette County, Ky. Certiorari denied.

No. 06–402. BOLTON *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 543.

No. 06–403. RICCI *v.* SALT LAKE CITY CORPORATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 810.

No. 06–405. RAY *v.* CSX TRANSPORTATION, INC. C. A. 4th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 154.

No. 06–409. AMCLYDE ENGINEERED PRODUCTS CO., INC., ET AL. *v.* TEXACO EXPLORATION & PRODUCTION, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 448 F. 3d 760 and 453 F. 3d 652.

No. 06–410. BAUER ET AL. *v.* ADVANCE PCS ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 280 Ga. 639, 632 S. E. 2d 95.

No. 06–411. MOTLEY *v.* INTEGON INDEMNITY INSURANCE CO. ET AL. Sup. Ct. Va. Certiorari denied.

No. 06–412. SAKKARAPOPE *v.* BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–414. NARRAGANSETT INDIAN TRIBE *v.* RHODE ISLAND ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 449 F. 3d 16.

No. 06–420. ALEXANDER *v.* STOWITZKY, SUPERINTENDENT, STATE REGIONAL CORRECTIONAL FACILITY AT MERCER. C. A. 3d Cir. Certiorari denied. Reported below: 163 Fed. Appx. 167.

No. 06–422. GOMES ET AL. *v.* WOOD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 451 F. 3d 1122.

No. 06–423. CAUCCI *v.* MEKIC ET UX. Super. Ct. Pa. Certiorari denied.

No. 06–425. DOE *v.* CARNIVAL CORP. C. A. 11th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 126.

No. 06–429. NAFTALY, CHAIRPERSON, MICHIGAN STATE TAX COMMISSION, ET AL. *v.* KEWEENAW BAY INDIAN COMMUNITY. C. A. 6th Cir. Certiorari denied. Reported below: 452 F. 3d 514.

No. 06–449. ON DEMAND MACHINE CORP. *v.* INGRAM INDUSTRIES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 442 F. 3d 1331.

No. 06–463. ROBERTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 338.

No. 06–465. PRICE ET AL. *v.* PHILIP MORRIS INC. Sup. Ct. Ill. Certiorari denied. Reported below: 219 Ill. 2d 182, 848 N. E. 2d 1.

No. 06–476. BROGDON *v.* MCMASTER, ATTORNEY GENERAL OF SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 275.

No. 06–483. OPW FUELING COMPONENTS *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 443 F. 3d 490.

No. 06–495. ERICKSON *v.* WASHINGTON DEPARTMENT OF NATURAL RESOURCES. Ct. App. Wash. Certiorari denied. Reported below: 127 Wash. App. 1024.

No. 06–496. MILLS *v.* BROWN ET AL. C. A. 1st Cir. Certiorari denied.

No. 06–506. MATTHEWS *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 456 F. 3d 1377.

No. 06–509. STOVALL *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 276 Ga. App. 784, 625 S. E. 2d 52.

No. 06–512. GEER *v.* UNITED STATES; and
No. 06–7236. GODINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 308.

No. 06–525. WILKES ET AL., TRUSTEES OF THE MARK E. AND MYRNA L. MASON IRREVOCABLE TRUST, ET AL. *v.* PHOENIX HOME LIFE MUTUAL INSURANCE CO. Sup. Ct. Pa. Certiorari denied. Reported below: 587 Pa. 590, 902 A. 2d 366.

No. 06–530. BRENKUS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 453 F. 3d 926.

No. 06–539. SHIPSEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 963.

No. 06–541. INDUSTRIAL CLEARINGHOUSE, INC. *v.* WALKER. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 379.

No. 06–547. DORCELY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 454 F. 3d 366.

No. 06–551. STEWART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–553. RUNYAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–575. IHMOUD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 454 F. 3d 887.

No. 06–578. SHAH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 313.

No. 06–586. ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 876.

No. 06–591. WHITNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 670.

No. 06–5359. ESPINOZA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 333.

No. 06–5386. THOMAS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 429 F. 3d 282.

No. 06–5392. GREEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 541.

No. 06–5413. PALACIOS-MUNGIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 347.

No. 06–5515. AGUIRRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–5616. EL-GHAZALI, AKA GHAZALI, AKA RAHMAN, AKA ABD-EL-RAHMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 142 Fed. Appx. 44.

No. 06–5653. DARIF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 446 F. 3d 701.

No. 06–5758. MANN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 175.

No. 06–5766. TABOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 173.

No. 06–5819. MOSS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–5846. BYROM *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 927 So. 2d 709.

No. 06–5908. MILES *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 06–5920. LORA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–5971. NEWELL *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 212 Ariz. 389, 132 P. 3d 833.

No. 06–5976. SCHECKEL *v.* IOWA DEPARTMENT OF REVENUE AND FINANCE. Ct. App. Iowa. Certiorari denied. Reported below: 715 N. W. 2d 771.

No. 06–5994. MORRIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 179 Fed. Appx. 825.

No. 06–6005. MITSVEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 452 F. 3d 1264.

No. 06–6052. PEOPLES *v.* CCA DETENTION CENTERS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 449 F. 3d 1097.

No. 06–6055. SHUFFIELD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 189 S. W. 3d 782.

No. 06–6107. RODRIGUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 812.

No. 06–6111. COOPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 689.

No. 06–6130. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6132. VALENCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–6145. GELINAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–6147. HALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–6187. MATZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6503. POWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6527. JONES *v.* SMITH-JONES. Sup. Ct. Ga. Certiorari denied. Reported below: 280 Ga. 872, 632 S. E. 2d 663.

No. 06–6531. MATHENEY *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 191 S. W. 3d 599.

No. 06–6536. SNELLING *v.* PUBLISHERS CLEARING HOUSE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 609.

No. 06–6537. DRAKE *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–6553. ROSS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 546.

No. 06–6570. WITHERSPOON *v.* DENNEHY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. App. Ct. Mass. Certiorari denied. Reported below: 65 Mass. App. 1126, 844 N. E. 2d 719.

No. 06–6578. PATTERSON *v.* MUNDY, AMHERST COUNTY COMMONWEALTH ATTORNEY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 340.

No. 06–6579. WILMS *v.* BROWN. C. A. 7th Cir. Certiorari denied.

No. 06–6592. SETTS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 934 So. 2d 450.

No. 06–6594. ROBINSON *v.* VEAL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6596. POUCHER *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–6597. SIMMONDS *v.* ABBOTT, ATTORNEY GENERAL OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 840.

No. 06–6598. REVAK *v.* CAMPBELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 674.

No. 06–6599. JONES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–6603. MACK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6606. TILLMON *v.* GENERAL MOTORS CORP. ET AL. Sup. Ct. Ky. Certiorari denied.

No. 06–6609. PENA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 26 App. Div. 3d 818, 807 N. Y. S. 2d 917.

No. 06–6613. ZAVALA *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 570.

No. 06–6618. BASKETT *v.* WOLFE ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–6619. BASKETT *v.* KING COUNTY DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–6621. BURTON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 06–6625. BURROW *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 06–6626. BROWN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6627. BARBER *v.* SIKES ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–6628. VALDOVINOS BARAJAS *v.* MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 06–6636. MOORE-EL *v.* LUEBBERS, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 446 F. 3d 890.

No. 06–6638. JONES *v.* SPITZER, ATTORNEY GENERAL OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 06–6644. ANDREWS *v.* MOORE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 500.

No. 06–6645. BENJAMIN *v.* EAGLETON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied.

No. 06–6651. WHITFIELD *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 601.

No. 06–6656. ODEN *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 581.

No. 06–6657. NORTON *v.* LEWIS, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–6669. FOGLE *v.* PIERSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 435 F. 3d 1252.

No. 06–6670. GUILLEN *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6672. HARVEY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 925 So. 2d 534.

No. 06–6684. PLANCK *v.* COUNTY OF SCHENECTADY, NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 29 App. Div. 3d 1053, 814 N. Y. S. 2d 374.

No. 06–6685. STEVENS *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6689. BRADLEY *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 748.

No. 06–6695. ALVAREZ ACUNA *v.* AMERICAN ARBITRATION ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 699.

No. 06–6709. GILMORE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–6710. HUNTER *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–6712. HICKMON *v.* JACKSON. C. A. 11th Cir. Certiorari denied.

No. 06–6713. GARDNER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6714. HANN *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 06–6715. HUNTER *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 06–6717. GARNER *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 928 So. 2d 911.

No. 06–6719. GARDNER *v.* PARKER, WARDEN, ET AL. Ct. Crim. App. Tenn. Certiorari denied.

No. 06–6722. FERNANDEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–6723. CAPELA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 06–6726. SUAREZ *v.* FRIEL, WARDEN, ET AL. Ct. App. Utah. Certiorari denied.

No. 06–6729. MANGAN *v.* PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION. Commw. Ct. Pa. Certiorari denied. Reported below: 883 A. 2d 731.

No. 06–6733. WEST *v.* ROSENBERG. C. A. 4th Cir. Certiorari denied.

No. 06–6735. LEWIS *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 649.

No. 06–6740. WRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6744. CONWAY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 109 Ohio St. 3d 412, 848 N. E. 2d 810.

No. 06–6749. GOWAN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6750. HUDSON *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 928.

No. 06–6753. HENDERSON *v.* THOMAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–6756. GOODWIN *v.* CARUSO, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–6762. MUTH *v.* ESTATE OF MUTH, DECEASED. Super. Ct. Pa. Certiorari denied. Reported below: 889 A. 2d 122.

No. 06–6763. OCHOA *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 136 P. 3d 661.

No. 06–6767. LABRANCH *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 653.

No. 06–6770. PICADO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–6778. WOODARD *v.* FELDSTEIN, JUDGE, COUNTY COURT OF NEW YORK, HAMILTON COUNTY. C. A. 2d Cir. Certiorari denied.

No. 06–6780. BENNETT *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 369 S. C. 219, 632 S. E. 2d 281.

No. 06–6789. YARDLEY *v.* CITY OF GOLDEN CITY, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–6793. BUTLER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 925 So. 2d 312.

No. 06–6794. HUNTER *v.* SCUTT. C. A. 6th Cir. Certiorari denied.

No. 06–6795. IVEY *v.* DEPARTMENT OF THE TREASURY. C. A. D. C. Cir. Certiorari denied.

No. 06–6797. HATCHER *v.* BARRON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–6799. WEARY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 931 So. 2d 297.

No. 06–6800. KENISTON *v.* SATYAVOLU ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–6803. BROWN *v.* PATTISON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 281.

No. 06–6804. MACK *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 361 Ill. App. 3d 1089, 911 N. E. 2d 6.

No. 06–6812. HARNDEN *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 729.

No. 06–6819. CARTER *v.* RANDOLPH COUNTY JAIL. C. A. 4th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 327.

No. 06–6826. ROSS *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–6833. WELLS *v.* FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 929 So. 2d 39.

No. 06–6845. ALFRED *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 447.

No. 06–6859. TWITTY *v.* STEPP, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 06–6882. HERNANDEZ *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 570.

No. 06–6883. GILLESPIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 452 F. 3d 1183.

No. 06–6884. GUFFEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 295.

No. 06–6941. NASH *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 06–6947. LEWIS *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 658.

No. 06–6948. MARTINEZ *v.* IDAHO STATE CORRECTIONAL INSTITUTION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 856.

No. 06–6956. MCCARY *v.* LEWIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–6960. GRAHAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–6961. DAT HOANG *v.* CENTRAL INTELLIGENCE AGENCY ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–6989. ABBO *v.* GONZALES, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied.

No. 06–6990. BURNES *v.* CENTRAL INTELLIGENCE AGENCY. C. A. D. C. Cir. Certiorari denied.

No. 06–6996. LITKE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 129 Wash. App. 1045.

No. 06–6999. ADESHUN *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 06–7031. PEOPLES *v.* CCA DETENTION CENTERS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 449 F. 3d 1097.

No. 06–7042. CARLSON *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 902 A. 2d 1114.

No. 06–7059. GRIFFIN *v.* LEMASTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 555.

No. 06–7086. BROWN *v.* BLAINE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 185 Fed. Appx. 166.

No. 06–7093. TAYLOR *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 954 So. 2d 1148.

No. 06–7095. HOOKS *v.* OHIO. Ct. App. Ohio, Butler County. Certiorari denied.

No. 06–7177. SPENCE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 450 F. 3d 691.

No. 06–7189. TODD *v.* NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 204.

No. 06–7199. NORRIS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 360 N. C. 507, 630 S. E. 2d 915.

No. 06–7224. BALL *v.* OUTLAW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7225. BOOSE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–7243. LOMBARDI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7245. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 454 F. 3d 642.

No. 06–7247. CRUZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 908.

No. 06–7248. CAMPBELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 254.

No. 06–7249. CLINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–7262. ZIDAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 673.

No. 06–7264. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7270. KELLEY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 934 So. 2d 51.

No. 06–7271. MONTGOMERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 327.

No. 06–7272. STANLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 728.

No. 06–7276. CARRIZALES-TOLEDO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 454 F. 3d 1142.

No. 06–7278. ELLIS *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–7280. RAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 436.

No. 06–7282. PENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–7286. STREVELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 841.

No. 06–7288. SOY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 470.

No. 06–7292. OKAI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 454 F. 3d 848.

No. 06–7296. MCHONE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 705.

No. 06–7297. RAMOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 462 F. 3d 329.

No. 06–7298. SMALLWOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 452 F. 3d 323.

No. 06–7302. CHEALY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 928.

No. 06–7306. ODUKOYA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 922.

No. 06–7309. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–7310. JIMENEZ-PEREZ *v.* BAUKNECHT, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 896.

No. 06–7314. JELINEK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7315. ZWIBEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 181 Fed. Appx. 238.

No. 06–7316. WILLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 653.

No. 06–7319. DAVIS *v.* UNITED STATES CONGRESS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 179 Fed. Appx. 843.

No. 06–7321. DAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 371.

No. 06–7322. PINSON *v.* RUMSFELD, SECRETARY OF DEFENSE, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 811.

No. 06–7324. BILLINGSLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 201.

No. 06–7334. WILKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 464 F. 3d 1240.

No. 06–7337. CORTES-LUIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 609.

No. 06–7338. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 452 F. 3d 323.

No. 06–7344. LINEAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 236.

No. 06–7347. YOUNES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 302.

No. 06–7348. TORRES-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 447 F. 3d 699.

No. 06–7350. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7351. PENNINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7355. ARMENTA-OROZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 596.

No. 06–7357. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7362. FEINGOLD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 454 F. 3d 1001.

No. 06–7364. HOLT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 749.

No. 06–7365. GALVAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 462.

No. 06–7366. GARCIA-PEREZ, AKA ASTORGA-TORRES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 461.

No. 06–7375. FERREN *v.* DEPARTMENT OF THE INTERIOR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 917.

No. 06–7376. GUTIERREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 812.

No. 06–7377. HERNANDEZ *v.* MONSANTO CO. ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 921 So. 2d 11.

No. 06–7378. OVIEDO-VILLARMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–7380. CLARKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 861.

No. 06–7381. DECARLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 778.

No. 06–7384. PUCKETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 898.

No. 06–7386. LINCOLN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 611.

No. 06–7388. MORALES-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 467 F. 3d 1.

No. 06–7392. ANDERSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 452 F. 3d 66.

No. 06–7393. BRISCO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7398. COBB *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 82.

No. 06–7400. DARDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 887.

No. 06–7402. PITTS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 852.

No. 06–7406. VALENZUELA-FONSECA *v.* UNITED STATES (Reported below: 191 Fed. Appx. 589); GONZALEZ-GUZMAN *v.* UNITED STATES (192 Fed. Appx. 631); ARREDONDO-VALENZUELA *v.* UNITED STATES (192 Fed. Appx. 651); GILES-MARTINEZ *v.* UNITED STATES (192 Fed. Appx. 647); RAMOS-CONTRERAS *v.* UNITED STATES (193 Fed. Appx. 732); RAMIREZ-VALERIO *v.* UNITED STATES (195 Fed. Appx. 631); TARIN-LOPEZ *v.* UNITED STATES (195 Fed. Appx. 691); ALCALA-GALVAN *v.* UNITED STATES (196 Fed. Appx. 509); AGUILAR-MERAS *v.* UNITED STATES (197 Fed. Appx. 612); GUTIERREZ-VALENCIA *v.* UNITED STATES (198 Fed. Appx. 665); RIVERA-LARA *v.* UNITED STATES (202 Fed. Appx. 162); FERNANDEZ-GAMEZ *v.* UNITED STATES (199 Fed. Appx. 608); BRISENO-MARIN, AKA LOPEZ-LOPEZ, AKA MARIN-HERNANDEZ *v.* UNITED STATES (201 Fed. Appx. 536); DIAZ-VALDEZ *v.* UNITED STATES (201 Fed. Appx. 547); RAMIREZ-MACIAS *v.* UNITED STATES (201 Fed. Appx. 538); ROMAN-MENA *v.* UNITED STATES (201 Fed. Appx. 534); TOBON-VERGARA *v.* UNITED STATES (201 Fed. Appx. 549); CISNEROS-GONZALEZ *v.* UNITED STATES (202 Fed. Appx. 161); GUADALUPE-CONTRERAS *v.* UNITED STATES (202 Fed. Appx. 280); VALDIVINOS-ALVAREZ, AKA JIMENEZ-CHAVEZ *v.* UNITED STATES (202 Fed. Appx. 264); and MONTES-PAYAN, AKA TORRES-QUINTERO, ET AL. *v.* UNITED STATES (203 Fed. Appx. 118). C. A. 9th Cir. Certiorari denied.

No. 06–7408. KUNTZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 594.

No. 06–7409. ALEXANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 475.

No. 06–7412. DAVILLA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–7418. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 323.

No. 06–7424. PELLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 646.

No. 06–7425. PICKENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 143.

No. 06–7426. LOPEZ-MAGALLON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 417.

No. 06–7427. KENDLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 909.

No. 06–7428. CORREA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–7429. CAVINESS *v.* HOLT, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 190 Fed. Appx. 157.

No. 06–7433. BAZA-TOLEDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7435. TAPIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 941.

No. 06–7447. GIBBS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 242.

No. 06–7448. HUGHES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 250.

No. 06–7449. GARNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 616.

No. 06–7451. HERNANDEZ-TOSCANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 565.

No. 06–7452. GIRALDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 581.

No. 06–7457. ORTIZ-CARDENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 561.

No. 06–7461. CARRICO ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 676.

No. 06–7468. PINEDA-HURTADO, AKA PINEDA, AKA RODRIGUEZ-FUENTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 674.

No. 06–7469. MAXWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 446 F. 3d 1210.

No. 06–7470. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 239.

No. 06–7474. WYNN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 393.

No. 06–7475. TERESHCHUK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 188.

No. 06–7476. TOLASE-COUSINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 455 F. 3d 1116.

No. 06–7477. WALKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 187 Fed. Appx. 248.

No. 06–7481. LEON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 250.

No. 06–7483. BRISCOE-BEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 182 Fed. Appx. 68.

No. 06–7486. GONZALES AMADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 608.

No. 06–7487. ALVAREZ-OCANEGRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 535.

No. 05–1367. ILLINOIS *v.* SLOUP. App. Ct. Ill., 2d Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 359 Ill. App. 3d 841, 834 N. E. 2d 995.

No. 06–71. DANTONE, INC., T/A CARRIAGE TRADE AUTO AUCTION *v.* UNITED STATES;

No. 06–79. LEAHY *v.* UNITED STATES;

No. 06–5400. GREGG *v.* UNITED STATES; and

No. 06–5401. FALLON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of these petitions. Reported below: Nos. 06–71, 06–79, and 06–5401, 438 F. 3d 328 and 445 F. 3d 634; No. 06–5400, 438 F. 3d 328, 445 F. 3d 634, and 169 Fed. Appx. 109.

No. 06–364. DELAWARE NATION *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 446 F. 3d 410.

No. 06–369. MISSOURI *v.* MCFADDEN. Sup. Ct. Mo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 191 S. W. 3d 648.

No. 06–421. HEMPHILL *v.* PROCTER & GAMBLE CO. ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 185 Fed. Appx. 938.

No. 06–604. MICROSOFT CORP. *v.* AMADO. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 185 Fed. Appx. 953.

No. 06–6877. REMOI *v.* GONZALES, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 175 Fed. Appx. 580.

Rehearing Denied

No. 05–1406. DAVIS *v.* POLK COUNTY SHERIFF'S OFFICE, *ante*, p. 812;

No. 05–1414. BYRD *v.* FLENNIKEN ET AL., *ante*, p. 813;

No. 05–1442. SARGENT, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF SARGENT *v.* CITY OF TOLEDO POLICE DEPARTMENT ET AL., *ante*, p. 814;

No. 05–1474. POURGHOLAM *v.* ADVANCED TELEMARKETING CORP., DBA AEGIS COMMUNICATIONS GROUP, INC., *ante*, p. 815;

No. 05–1485. MARESCA *v.* MANCALL ET AL., *ante*, p. 816;

No. 05–1555. MAHARAJ *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 819;

No. 05–1565. MERRILL *v.* BURKE E. PORTER MACHINERY CO., *ante*, p. 820;

No. 05–1636. ARMSTRONG *v.* HOWELL ET AL., *ante*, p. 824;

No. 05–9739. WILLIAMS *v.* DEPARTMENT OF LABOR ET AL., *ante*, p. 827;

No. 05–10220. ADAMS *v.* HOLLAND, WARDEN, *ante*, p. 827;

No. 05–10658. VELEZ *v.* MODERN LINENS & TOWELS ET AL., *ante*, p. 829;

No. 05–10662. DUNLAP *v.* MICHIGAN, *ante*, p. 829;

No. 05–10813. YOUNG *v.* BOSTON UNIVERSITY, *ante*, p. 832;

No. 05–10886. PERRY *v.* UNITED PARCEL SERVICE, INC., *ante*, p. 834;

No. 05–10927. DIXON *v.* CITY OF MARION, INDIANA, ET AL., *ante*, p. 836;

No. 05–11020. KNOX *v.* SCOVILLE ET AL., *ante*, p. 839;

No. 05–11119. JAROCH *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 842;

No. 05–11176. DEJESUS ESTACIO *v.* OREGON, *ante*, p. 844;

No. 05–11213. WILDE *v.* ESTATE OF DENISON ET AL., *ante*, p. 845;

No. 05–11232. ERICKSON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, *ante*, p. 845;

No. 05–11242. PEAY *v.* KETCHEM ET AL., *ante*, p. 846;

No. 05–11250. PRESSLEY *v.* UNITED STATES, *ante*, p. 846;

No. 05–11271. BEARD *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 847;

No. 05–11316. HUSSER *v.* RYAN, WARDEN, *ante*, p. 849;

No. 05–11333. SPEARS *v.* BETSY JOHNSON HEALTH CARE SYSTEMS, INC., ET AL., *ante*, p. 850;

No. 05–11364. OTT *v.* CAREY, WARDEN, *ante*, p. 852;

No. 05–11394. BIROS *v.* BAGLEY, WARDEN, *ante*, p. 853;

No. 05–11451. PINEDA *v.* BRIDGETT, *ante*, p. 857;

No. 05–11457. PINEDA *v.* GIBSON, *ante*, p. 857;

No. 05–11470. COULTER *v.* ARKANSAS, *ante*, p. 858;

No. 05–11524. DANTZLER *v.* UNITED STATES, *ante*, p. 861;

No. 05–11557. FRATILA *v.* BOUDLOCHE, TRUSTEE, *ante*, p. 863;

No. 05–11591. SCHEIB *v.* MELLON BANK ET AL., *ante*, p. 866;

No. 05–11612. BERAS *v.* UNITED STATES, *ante*, p. 867;

No. 05–11635. NANCE *v.* GEORGIA, *ante*, p. 868;

No. 05–11717. RODRIGUEZ *v.* UNITED STATES, *ante*, p. 873;

No. 05–11727. ADDAMS-MORE *v.* UNITED STATES, *ante*, p. 874;

No. 05–11777. WEST *v.* STOUFFER, WARDEN, *ante*, p. 876;

No. 05–11791. HOWARD *v.* SMITH, WARDEN, *ante*, p. 877;

No. 05–11806. FRIEDRICH *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 878;

No. 05–11810. IN RE FREEMAN, *ante*, p. 808;

No. 06–20. FARRALES ET AL. *v.* UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES ET AL., *ante*, p. 882;

No. 06–24. VAN DE BERG *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 882;

No. 06–76. IN RE MCDONALD, *ante*, p. 809;

No. 06–92. EDWARDS ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION, *ante*, p. 885;

No. 06–125. WILLIAMS *v.* GEORGIA ET AL., *ante*, p. 887;

No. 06–141. GIVEN ET UX. *v.* UNITED STATES, *ante*, p. 887;

No. 06–209. HERNANDEZ *v.* UNITED STATES, *ante*, p. 889;

No. 06–239. HANSL *v.* UNITED STATES, *ante*, p. 890;

No. 06–5002. WILLIAMS *v.* UNITED STATES, *ante*, p. 890;

No. 06–5099. YAZDCHI ET AL. *v.* BANK ONE, TEXAS, N. A., ET AL., *ante*, p. 895;

No. 06–5112. FICKEN, INDIVIDUALLY, AND AS FATHER, BEST FRIEND, AND ON BEHALF OF IVANOF, A MINOR CHILD *v.* GOLDEN ET AL. (two judgments), *ante*, p. 896;

No. 06–5173. WASHINGTON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 900;

No. 06–5280. WILTON *v.* LOUISIANA ET AL., *ante*, p. 906;

No. 06–5358. LOPATKA *v.* IOWA, *ante*, p. 910;

No. 06–5453. WARFIELD *v.* SOUTH DAKOTA, *ante*, p. 915;

No. 06–5466. IN RE VARGAS, *ante*, p. 808;

No. 06–5474. POWERS *v.* DEPARTMENT OF LABOR ET AL., *ante*, p. 917;

No. 06–5507. WILSON *v.* NORTH CAROLINA DEPARTMENT OF CORRECTION, *ante*, p. 919;

No. 06–5544. HECK *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 921;

No. 06–5571. MUMANI *v.* GILMORE, *ante*, p. 922;

No. 06–5592. ANDERSON *v.* OSH KOSH B'GOSH, *ante*, p. 923;

No. 06–5599. HAMILTON *v.* FLORIDA ET AL. (two judgments), *ante*, p. 957;

No. 06–5672. CRAIG *v.* UNITED STATES, *ante*, p. 926;

No. 06–5697. YEKIMOFF *v.* NEW YORK, *ante*, p. 958;

No. 06–5732. ANDREWS *v.* DOUGLAS COUNTY, NEBRASKA, ET AL., *ante*, p. 959;

No. 06–5733. WEST *v.* MARYLAND, *ante*, p. 928;

No. 06–5735. YOUNG *v.* LUEBBERS, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER, *ante*, p. 928;

No. 06–5864. IN RE ALLEN, *ante*, p. 808;

No. 06–5866. CALCARI *v.* LAMPERT, DIRECTOR, WYOMING DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 932;

No. 06–5958. MACKEY *v.* UNITED STATES, *ante*, p. 935;

No. 06–6075. GEORGIADES *v.* CAREY, WARDEN, ET AL., *ante*, p. 964;

No. 06–6152. WILLIAMS *v.* UNITED STATES, *ante*, p. 941;

No. 06–6193. KING *v.* JETER, WARDEN, *ante*, p. 965;

No. 06–6204. IN RE DRABOVSKIY, *ante*, p. 808;

No. 06–6275. IN RE BUMPASS, *ante*, p. 808;

No. 06–6278. IN RE INTROCASO, *ante*, p. 951; and

No. 06–6470. CUYLER *v.* RAYCOM MEDIA, INC., DBA WOIO/WUAB CHANNELS 19 AND 43, ET AL., *ante*, p. 1003. Petitions for rehearing denied.

No. 05–10985. WILLIAMS *v.* CINTAS CORP. ET AL., *ante*, p. 944. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

DECEMBER 1, 2006

Certiorari Granted

No. 06–157. HEIN, DIRECTOR, WHITE HOUSE OFFICE OF FAITH-BASED AND COMMUNITY INITIATIVES, ET AL. *v.* FREEDOM FROM RELIGION FOUNDATION, INC., ET AL. C. A. 7th Cir. Certiorari granted. Petitioners' brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, January 5, 2007. Respondents' brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, February 2, 2007. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, February 16, 2007. Reported below: 433 F. 3d 989.

No. 06–219. WILKIE ET AL. *v.* ROBBINS. C. A. 10th Cir. Certiorari granted. Petitioners' brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, January 5, 2007. Respondent's brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, February 2, 2007. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, February 16, 2007. Reported below: 433 F. 3d 755.

No. 06–278. MORSE ET AL. *v.* FREDERICK. C. A. 9th Cir. Motion of National School Boards Association et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Petitioners' brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, January 5, 2007. Respondent's brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, February 2, 2007. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, February 16, 2007. Reported below: 439 F. 3d 1114.

DECEMBER 4, 2006

Certiorari Dismissed

No. 06–6821. STEPHEN *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–6839. MURDOCK *v.* AMERICAN AXLE & MANUFACTURING, INC. Ct. App. Mich. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 06A551. TAFT, GOVERNOR OF OHIO, ET AL. *v.* HENDERSON. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Sixth Circuit on December 1, 2006, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

No. 06M50. FORD *v.* GREEN ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 05–1272. ROCKWELL INTERNATIONAL CORP. ET AL. *v.* UNITED STATES ET AL. C. A. 10th Cir. [Certiorari granted, 548

U. S. 941.] Motion of National Industrial Defense Association for leave to file a brief as *amicus curiae* out of time granted. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 05–1629. GONZALES, ATTORNEY GENERAL *v.* DUENAS-ALVAREZ. C. A. 9th Cir. [Certiorari granted, 548 U. S. 942.] Motions of California Public Defenders Association and Professors of Criminal Law for leave to file briefs as *amici curiae* out of time granted.

No. 05–11572. KRONCKE *v.* ARIZONA ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 06–5791. MINNIECHESKE *v.* VILLAGE OF TIGERTON, WISCONSIN (two judgments). Ct. App. Wis. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 948] denied.

No. 06–5982. KRONCKE *v.* HOOD ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 974] denied.

No. 06–7652. IN RE MCCALL;
No. 06–7680. IN RE DUMONDE; and
No. 06–7762. IN RE VARNADO. Petitions for writs of habeas corpus denied.

No. 06–6900. IN RE SMITH. Petition for writ of mandamus denied.

No. 06–6937. IN RE RHETT. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 05–1525. R. J. REYNOLDS TOBACCO CO. *v.* TUAZON. C. A. 9th Cir. Certiorari denied. Reported below: 433 F. 3d 1163.

No. 05–11255. STEAD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 678.

No. 05–11338. HAWKINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 98.

No. 05–11647. WADLINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 428 F. 3d 779.

No. 06–26. ANGELOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 433 F. 3d 738.

No. 06–139. SHAKIR *v.* PRAIRIE VIEW A&M UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 361.

No. 06–282. CATHOLIC HEALTHCARE WEST ET AL. *v.* UNITED STATES EX REL. HAIGHT ET AL.; and
No. 06–473. UNITED STATES EX REL. HAIGHT ET AL. *v.* CATHOLIC HEALTHCARE WEST ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 445 F. 3d 1147.

No. 06–307. VALLEY VIEW PARTNERS *v.* NORTHAMPTON COUNTY TAX CLAIM BUREAU ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 879 A. 2d 880.

No. 06–444. LOWELL *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–446. DUNN ET AL. *v.* NITRO DISTRIBUTING, INC., ET AL. Sup. Ct. Mo. Certiorari denied. Reported below: 194 S. W. 3d 339.

No. 06–451. DUNN ET AL. *v.* NETCO, INC., ET AL. Sup. Ct. Mo. Certiorari denied. Reported below: 194 S. W. 3d 353.

No. 06–452. FENDRICK *v.* PPL SERVICES CORP. C. A. 3d Cir. Certiorari denied. Reported below: 193 Fed. Appx. 138.

No. 06–467. LIU ET AL. *v.* CREDIT SUISSE (USA), INC., FKA CREDIT SUISSE FIRST BOSTON (USA), INC., ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–470. ONEIDA INDIAN NATION OF NEW YORK *v.* PETERMAN ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 21 App. Div. 3d 1387, 801 N. Y. S. 2d 212.

No. 06–471. PERSIK *v.* SUTHERS, ATTORNEY GENERAL OF COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 421.

No. 06–472. BERGMAN ET AL. *v.* KANSAS ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 282 Kan. 9, 138 P. 3d 755.

No. 06–479. CENTER FOR BIO-ETHICAL REFORM, INC., ET AL. *v.* CITY AND COUNTY OF HONOLULU, HAWAII, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 455 F. 3d 910.

No. 06–504. EUI SIK CHUN *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 379.

No. 06–517. U. S. BANK NATIONAL ASSN., INDENTURED TRUSTEE *v.* JP MORGAN CHASE BANK, TRUSTEE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 449 F. 3d 588.

No. 06–537. HOLTON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 280 Ga. 843, 632 S. E. 2d 90.

No. 06–538. GRENIER ET AL. *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 188 Fed. Appx. 999.

No. 06–548. OPALA *v.* WATT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 454 F. 3d 1154.

No. 06–552. PUNCHARD *v.* BUREAU OF LAND MANAGEMENT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 817.

No. 06–554. GREAT SENECA FINANCIAL CORP. ET AL. *v.* KELLY ET VIR. C. A. 6th Cir. Certiorari denied. Reported below: 447 F. 3d 944.

No. 06–568. CRAWLEY *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 187 N. J. 440, 901 A. 2d 924.

No. 06–569. LOVE *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 184 Fed. Appx. 962.

No. 06–570. SHORTRIDGE *v.* MICHIGAN. 28th Dist. Ct. Wayne County, Mich. Certiorari denied.

No. 06–573. FALCONE ET AL. *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 902 A. 2d 141.

No. 06–574. GLOVER *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 910.

No. 06–585. LYNCH *v.* TRENDWEST RESORTS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 667.

No. 06–601. ODEH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 346.

No. 06–5186. RODRIGUEZ-ESCOBAR *v.* UNITED STATES (Reported below: 176 Fed. Appx. 465); and LOPEZ *v.* UNITED STATES (177 Fed. Appx. 452). C. A. 5th Cir. Certiorari denied.

No. 06–5591. MAHAN *v.* CITY OF LUBBOCK, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 377.

No. 06–5883. JOHNSON *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 340 Ore. 319, 131 P. 3d 173.

No. 06–5905. SMITH *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 06–5970. NICHOLS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 593.

No. 06–6054. BUCKLEW *v.* LUEBBERS, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 436 F. 3d 1010.

No. 06–6280. GUTIERREZ-CISNEROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 173.

No. 06–6322. LOPEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–6438. ZENDRAN *v.* PROVIDENCE POLICE DEPARTMENT. C. A. 1st Cir. Certiorari denied.

No. 06–6662. IRVAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–6824. SHERMAN *v.* SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY, ET AL. Sup. Ct. Cal. Certiorari denied.

No. 06–6825. ROUSE *v.* PHILLIPS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–6827. SINQUEFIELD *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 976 So. 2d 520.

No. 06–6849. SNIPES *v.* PALMER. C. A. 7th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 674.

No. 06–6850. DOUGLASS *v.* UNITED AUTO WORKERS LOCAL UNION 31 ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 656.

No. 06–6856. YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6858. RODGERS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 934 So. 2d 1207.

No. 06–6860. CRANE *v.* STATE FARM INSURANCE CO. Ct. App. Ga. Certiorari denied. Reported below: 278 Ga. App. 655, 629 S. E. 2d 424.

No. 06–6871. COUSIN *v.* KROGER CO. C. A. 6th Cir. Certiorari denied.

No. 06–6881. NORRIS *v.* OHIO DEPARTMENT OF REHABILITATION AND CORRECTION ET AL. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 06–6885. FITZPATRICK *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 193 S. W. 3d 280.

No. 06–6889. ELTAWIL *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 06–6898. SWINSON *v.* BLACKSHEAR ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 292 Wis. 2d 414, 718 N. W. 2d 727.

No. 06–6904. GIDNEY *v.* LITTLE FLOWER ADOPTIONS. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 191 S. W. 3d 916.

No. 06–6909. JEFFERSON *v.* WARDEN OF WEST CARROLL DETENTION CENTER. C. A. 5th Cir. Certiorari denied.

No. 06–6917. YOUNG *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 196 S. W. 3d 85.

No. 06–6919. WADDELL *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 277 Ga. App. 772, 627 S. E. 2d 840.

No. 06–6920. ZHAI *v.* MUNICIPALITY OF CEDAR GROVE, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 183 Fed. Appx. 253.

No. 06–6924. KIRKLAND *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–6925. LARSEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 236.

No. 06–6926. MALENA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6927. CARRILLO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–6932. GRANADOS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 3d 529.

No. 06–6933. O'BRIEN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–6936. NALI *v.* HARRIS. Ct. App. Mich. Certiorari denied.

No. 06–6938. PHELPS *v.* DONAT, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 616.

No. 06–6939. RUTLEDGE *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 359 Ill. App. 3d 1211, 904 N. E. 2d 1247.

No. 06–6940. SCOTT *v.* MCCABE, CORRECTIONAL ADMINISTRATOR I, HARNETT CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 278.

No. 06–6945. MEDINA *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6946. LEE *v.* GRINER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 877.

No. 06–6950. WASHINGTON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 933 So. 2d 539.

No. 06–6951. SINGLETON *v.* ALABAMA DEMOCRATIC PARTY ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–6957. MORGAN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6965. GARDNER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6966. FLEMINGS *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6967. FRIERSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 926 So. 2d 1139.

No. 06–6969. MILBOURN *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–6971. SUDDUTH, AKA MUHAMMAD *v.* ROGIERO ET AL. Super. Ct. Pa. Certiorari denied.

No. 06–6977. MACLIN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–6982. BRYANT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–6997. ORANGE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 06–6998. MAYWEATHER, AKA IHSAN *v.* WILKINSON, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–7019. SHAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7023. OKELLO *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 173.

No. 06–7054. McCaslin *v.* Barnhart, Commissioner of Social Security. C. A. 8th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 883.

No. 06–7102. Sutton *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 1734, 178 P. 3d 808.

No. 06–7116. Zakiya *v.* United States et al. C. A. 4th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 462.

No. 06–7121. Somerville *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 460.

No. 06–7138. Henderson *v.* Norris, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 06–7141. Kilgore *v.* McMacken, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 06–7186. Schwartz *v.* Neal, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 265.

No. 06–7208. Blandford *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 06–7221. Blakely *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 302.

No. 06–7251. Jones *v.* United Space Alliance, LLC. C. A. 11th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 52.

No. 06–7258. Blackmer *v.* Cattell, Warden. C. A. 1st Cir. Certiorari denied.

No. 06–7266. DeGeorge *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 764.

No. 06–7283. Miller *v.* Kummer et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–7293. Bowen *v.* City of Los Angeles, California. C. A. 9th Cir. Certiorari denied.

No. 06–7300. Jackson *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 936 So. 2d 572.

No. 06–7311. Martinez *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 06–7312. JENNINGS *v.* PURKETT, SUPERINTENDENT, EASTERN RECEPTION, DIAGNOSTIC AND CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 06–7340. MORRISON *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 06–7383. CRUZ *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–7404. MANCIANO *v.* BUDGE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 577.

No. 06–7419. CLOUD *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 768 So. 2d 1024.

No. 06–7437. SALAZAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 455 F. 3d 1022.

No. 06–7438. RAMOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 662.

No. 06–7439. RAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 580.

No. 06–7440. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 408.

No. 06–7441. MORA RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 554.

No. 06–7442. SIGMOND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 804.

No. 06–7444. RUSSELL *v.* WILLIAMSON, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 198 Fed. Appx. 164.

No. 06–7472. ALI *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–7479. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 383.

No. 06–7482. STAINE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 340.

No. 06–7491. DEFTERIOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 685.

No. 06–7492. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 316.

No. 06–7493. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7494. LOVE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 230.

No. 06–7497. BATTLE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 895 A. 2d 925.

No. 06–7500. BODDIE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7501. BELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 786.

No. 06–7503. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–7507. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 114.

No. 06–7508. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 301.

No. 06–7509. PITTMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7510. PAI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 719.

No. 06–7519. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 909.

No. 06–7520. IRIZARRY-CENTENO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–7521. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 854.

No. 06–7522. HOLBROOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 312.

No. 06–7523. HAMMOND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 670.

No. 06–7524. GOMEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 413.

No. 06–7525. GARLAND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–7526. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 430.

No. 06–7531. PRYCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 638.

No. 06–7532. GREGORY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 353.

No. 06–7543. SERRANO-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 703.

No. 06–7547. POE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 442 F. 3d 1101.

No. 06–7548. VILLA-LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 06–7557. MARIN, AKA MARIN-CIFUENTES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7558. NELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 688.

No. 06–7559. PRIMO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 198 Fed. Appx. 56.

No. 06–7561. LUCIANO-RODRIGUEZ *v.* UNITED STATES (Reported below: 442 F. 3d 320); RUIZ-DIAZ *v.* UNITED STATES (195 Fed. Appx. 248); MARTINEZ-VASQUEZ *v.* UNITED STATES (196 Fed. Appx. 278); CERVANTES-NUNCIO, AKA AREOLA-BARBOSA *v.* UNITED STATES (198 Fed. Appx. 411); MONJARAS-NAVARETTE, AKA MONTALVO-NAVARRETE *v.* UNITED STATES (198 Fed. Appx. 411); MARTINEZ-SANDOVAL *v.* UNITED STATES (199 Fed. Appx. 394); VELASQUEZ-GONZALEZ, AKA VELASQUEZ *v.* UNITED STATES (198 Fed. Appx. 398); TORRES-FLORES *v.* UNITED STATES (198 Fed. Appx. 410); RANGEL-RANGEL, AKA GARCIA-HERNANDEZ *v.* UNITED STATES (197 Fed. Appx. 373); VENEGAS-GARCIA *v.* UNITED STATES (197 Fed. Appx. 374); NINO-JARAMILLO *v.* UNITED STATES (200 Fed. Appx. 348); FLORES-HERNANDEZ *v.* UNITED

STATES (202 Fed. Appx. 8); SANCHEZ-HERNANDEZ *v.* UNITED STATES (201 Fed. Appx. 296); ESTRADA-MARTINEZ, AKA REYES *v.* UNITED STATES (202 Fed. Appx. 17); LORENZO-REBOLLAR *v.* UNITED STATES (202 Fed. Appx. 24); NAJERA-MARTINEZ, AKA MARTINEZ, AKA MARTINEZ NAJERA *v.* UNITED STATES (199 Fed. Appx. 360); ALVAREZ-ROSAS *v.* UNITED STATES (202 Fed. Appx. 4); and BOTELLO-YALLEZ *v.* UNITED STATES (202 Fed. Appx. 23). C. A. 5th Cir. Certiorari denied.

No. 06–7563. BELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 663.

No. 06–7564. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 902.

No. 06–7565. WADE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 188 Fed. Appx. 146.

No. 06–7571. BONNINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 612.

No. 06–7573. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 903.

No. 06–7576. BARTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 455 F. 3d 649.

No. 06–7578. RINCON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 180 Fed. Appx. 376.

No. 06–7580. ROBINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7581. FLORES-RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7584. ESCARCEGA-ARELLANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 670.

No. 06–7585. ENSMINGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 198.

No. 06–7586. CHEZEM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 689.

No. 06–7587. CARSWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 1009.

No. 06–7592. LYONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–7601. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–7604. GOODFACE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7609. BUESO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–7613. OSLUND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 453 F. 3d 1048.

No. 06–7616. MANLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–7617. MATOS-QUINONES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 456 F. 3d 14.

No. 06–7618. MACK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 799.

No. 06–7619. LANGLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7620. STEWART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 803.

No. 06–7621. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 755.

No. 06–7626. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 832.

No. 06–7630. CARUTHERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 458 F. 3d 459.

No. 06–7632. CORDOVA-AREVALO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 456 F. 3d 1229.

No. 06–7636. HUBLER *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 727.

No. 06–7642. HOUSE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7644. RAMIREZ-CORTEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7645. RAY *v.* BEZY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 502.

No. 06–7646. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 813.

No. 06–7649. QUINTANILLA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7651. HAGOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 217.

No. 06–7657. ELLSWORTH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 456 F. 3d 1146.

No. 06–7667. ARROYO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7672. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7673. WONG-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 365.

No. 06–300. FIELDS ET AL. *v.* PALMDALE SCHOOL DISTRICT ET AL. C. A. 9th Cir. Motion of Congressman Tim Murphy et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 427 F. 3d 1197 and 447 F. 3d 1187.

No. 06–320. ABLE BUILDING MAINTENANCE CO. *v.* BOARD OF TRUSTEES OF GENERAL EMPLOYEES TRUST FUND ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 175 Fed. Appx. 118.

No. 06–458. COOPERATIVA DE SEGUROS DE VIDA DE PUERTO RICO *v.* F. A. C., INC., DBA FINANCIAL ADVISORS AND CONSULTANTS, INC., ET AL. C. A. 1st Cir. Motion of respondent F. A. C., Inc., for leave to file a brief in opposition under seal with redacted

copies for the public record granted. Certiorari denied. Reported below: 449 F. 3d 185.

No. 06–5936. BARNETTE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

Rehearing Denied

No. 04–10653. JORDAN *v.* ALLGROUP WHEATON, 547 U. S. 1039;

No. 05–1644. WILLIAMS *v.* GEORGIA ET AL., *ante*, p. 825;

No. 05–10782. CAUDILL *v.* HOLT, WARDEN, ET AL., *ante*, p. 832;

No. 05–10850. REDD *v.* CONWAY ET AL., *ante*, p. 833;

No. 05–10900. HILTON *v.* FLORIDA, *ante*, p. 835;

No. 05–10988. REDDITT *v.* VIRGINIA ET AL., *ante*, p. 838;

No. 05–11185. STANFORD *v.* SMITH, WARDEN, ET AL., *ante*, p. 844;

No. 05–11234. ABDUS-SAMAD, FKA BOYD *v.* BELL, WARDEN, *ante*, p. 952;

No. 05–11474. IN RE ARMSTRONG, *ante*, p. 809;

No. 05–11654. CALLIES *v.* UNITED STATES, *ante*, p. 869;

No. 05–11664. STANFORD *v.* SMITH, WARDEN, *ante*, p. 870;

No. 05–11674. CAMPBELL *v.* HENRY, WARDEN, *ante*, p. 870;

No. 06–37. KALIL *v.* UNITED STATES DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER, ET AL., *ante*, p. 882;

No. 06–55. MARTIN *v.* UNITED STATES COURT OF INTERNATIONAL TRADE, *ante*, p. 883;

No. 06–5098. BOWMAN *v.* NEAL, WARDEN, ET AL., *ante*, p. 895;

No. 06–5171. ERBY *v.* KULA, *ante*, p. 899;

No. 06–5285. BROWN *v.* UNITED STATES, *ante*, p. 906;

No. 06–5314. SANDERS *v.* HULICK, WARDEN, *ante*, p. 908;

No. 06–5429. HOWARD, AKA TAYLOR *v.* CHASE, WARDEN, *ante*, p. 914;

No. 06–5459. AMRHEIN-MACON *v.* WOOD ET AL., *ante*, p. 916;

No. 06–5552. HUNTER *v.* SOUTH CAROLINA, *ante*, p. 921;

No. 06–5606. SNYPE *v.* UNITED STATES, *ante*, p. 923;

No. 06–5626. MCCORMICK *v.* BRAVERMAN, *ante*, p. 957;

No. 06–5630. VELISHKA *v.* T. N. T. HOME BUILDERS ET AL., *ante*, p. 957;

No. 06–5640. STEPHENS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 957;

No. 06–5716. MORRIS *v.* THOMPSON, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT SHIRLEY, *ante*, p. 959;

No. 06–5762. WHITE *v.* APOLLO GROUP, INC., DBA UNIVERSITY OF PHOENIX, ET AL., *ante*, p. 929;

No. 06–5797. FINK *v.* CALIFORNIA STATE UNIVERSITY NORTHRIDGE ET AL., *ante*, p. 961;

No. 06–5814. ALVAREZ ACUNA *v.* JONES, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL., *ante*, p. 961;

No. 06–5882. BOYD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 977;

No. 06–5934. ARMEL *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 963;

No. 06–5956. ROSAS SANTOYO *v.* UNITED STATES, *ante*, p. 935;

No. 06–6067. HURST *v.* NORTHROP GRUMMAN CORP., *ante*, p. 964;

No. 06–6264. MINER *v.* UNITED STATES, *ante*, p. 967;

No. 06–6347. IN RE WISE, *ante*, p. 975;

No. 06–6368. BANKS *v.* UNITED STATES, *ante*, p. 970; and

No. 06–6665. IN RE MOORE, *ante*, p. 974. Petitions for rehearing denied.

No. 05–10875. NOTTINGHAM *v.* DEITER, JUDGE, SUPERIOR COURT OF INDIANA, MARION COUNTY; NOTTINGHAM *v.* BABCOCK ET AL.; NOTTINGHAM *v.* UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT ET AL.; NOTTINGHAM *v.* INDIANA; and NOTTINGHAM *v.* SUPERIOR COURT OF INDIANA, MARION COUNTY, ET AL., *ante*, p. 944. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 05–11331. SHIH-LING CHEN *v.* ROCHFORD, SHERIFF, MORRIS COUNTY, NEW JERSEY, ET AL., *ante*, p. 945; and

No. 05–11731. AWAN *v.* GONZALES, ATTORNEY GENERAL, *ante*, p. 945. Petitions for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of these petitions.

No. 06–5708. ARON *v.* QUEST DIAGNOSTICS INC., *ante*, p. 973. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

DECEMBER 6, 2006

Dismissal Under Rule 46

No. 06–7593. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 440 F. 3d 1286.

DECEMBER 7, 2006

Certiorari Granted

No. 05–1157. CREDIT SUISSE SECURITIES (USA) LLC, FKA CREDIT SUISSE FIRST BOSTON LLC, ET AL. *v.* BILLING ET AL. C. A. 2d Cir. Motions of NYSE Group, Inc., National Association of Securities Dealers, Inc., and Securities Industry Association et al. for leave to file briefs as *amici curiae* granted. Certiorari granted.* THE CHIEF JUSTICE took no part in the consideration or decision of these motions and this petition. Reported below: 426 F. 3d 130.

No. 06–313. ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* WEAVER. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 438 F. 3d 832.

No. 06–480. LEEGIN CREATIVE LEATHER PRODUCTS, INC. *v.* PSKS, INC., DBA KAY'S KLOSET . . . KAY'S SHOES. C. A. 5th Cir. Motions of CTIA-The Wireless Association, Economists, and National Association of Manufacturers for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 171 Fed. Appx. 464.

No. 06–5247. FRY *v.* PLILER, WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 3 presented by the petition. Reported below: 209 Fed. Appx. 622.

No. 06–5306. BOWLES *v.* RUSSELL, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 432 F. 3d 668.

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*[REPORTER'S NOTE: This order was vacated on March 19, 2007. *Post*, p. 1277.]

DECEMBER 11, 2006

Certiorari Granted—Vacated and Remanded

No. 05–830. SALAZAR-REGINO ET AL. *v.* MOORE, REGIONAL DIRECTOR, DEPARTMENT OF HOMELAND SECURITY, ET AL. C. A. 5th Cir. Reported below: 415 F. 3d 436; and

No. 05–1276. GALINDO-PENA *v.* GONZALES, ATTORNEY GENERAL; and ACOSTA-GRIMALDO *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Lopez* v. *Gonzales*, *ante*, p. 47.

No. 05–7496. MENDOZA-TORRES *v.* UNITED STATES (Reported below: 145 Fed. Appx. 888); SAUZO-IZAGUIRRE *v.* UNITED STATES (141 Fed. Appx. 318); RAMIREZ-MALDONADO *v.* UNITED STATES (145 Fed. Appx. 55); ALEJO-AGRAMON *v.* UNITED STATES (140 Fed. Appx. 586); EGUIA-HERNANDEZ *v.* UNITED STATES (141 Fed. Appx. 329); ARMENDARIZ-CHAVEZ *v.* UNITED STATES (140 Fed. Appx. 589); PALENCIA-CONTRERAS, AKA GONZALEZ-HERNANDEZ *v.* UNITED STATES (141 Fed. Appx. 342); COLATOS-RIVAS, AKA RIVAS *v.* UNITED STATES (146 Fed. Appx. 723); VENCES *v.* UNITED STATES (148 Fed. Appx. 223); GUARDADO-ORTEGA *v.* UNITED STATES (150 Fed. Appx. 302); and LOREDO-PECINA *v.* UNITED STATES (149 Fed. Appx. 312). C. A. 5th Cir.;

No. 05–7689. VILLANUEVA PRONES *v.* UNITED STATES. C. A. 5th Cir. Reported below: 145 Fed. Appx. 481;

No. 05–8331. TREJO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Reported below: 149 Fed. Appx. 307;

No. 05–8644. SIFUENTES-FLORES *v.* UNITED STATES. C. A. 5th Cir. Reported below: 145 Fed. Appx. 497;

No. 05–8662. RIASCOS-CUENU *v.* UNITED STATES. C. A. 5th Cir. Reported below: 428 F. 3d 1100;

No. 05–9657. FIGUEROA-CASTRO, AKA CASTRO-GODINEZ, AKA GODINEZ-CASTRO, AKA CASTRO-GODINES *v.* UNITED STATES. C. A. 5th Cir. Reported below: 158 Fed. Appx. 622;

No. 05–10510. GUTIERREZ-TOVAR *v.* UNITED STATES (Reported below: 169 Fed. Appx. 214); SOLIS-ALVAREZ, AKA SOLIS-GARZA, AKA SOLIZ-GARZA *v.* UNITED STATES (169 Fed. Appx. 224); MORTERA *v.* UNITED STATES (169 Fed. Appx. 203); VILLA-GUTIERREZ *v.* UNITED STATES (169 Fed. Appx. 185); REYES-BAUTISTA *v.* UNITED STATES (167 Fed. Appx. 996); ALDANA-SANABRIA *v.* UNITED STATES (169 Fed. Appx. 197);

TORRES-MARTINEZ *v.* UNITED STATES (169 Fed. Appx. 235); GONZALEZ-SILVA *v.* UNITED STATES (166 Fed. Appx. 150); LOZANO-MIRELES *v.* UNITED STATES (161 Fed. Appx. 432); HERRERA-TREJO *v.* UNITED STATES (169 Fed. Appx. 225); OVIEDO-MEDINA *v.* UNITED STATES (169 Fed. Appx. 271); and PICENO-BAEZ *v.* UNITED STATES (168 Fed. Appx. 644). C. A. 5th Cir.;

No. 05–11561. PECENO-MONTANEZ, AKA PICENO-MONTANEZ *v.* UNITED STATES (Reported below: 171 Fed. Appx. 462); MENDEZ-LEYVA *v.* UNITED STATES (168 Fed. Appx. 568); ROSENBAUM-ALANIS *v.* UNITED STATES (176 Fed. Appx. 448); RODRIGUEZ-CUEVAS *v.* UNITED STATES (176 Fed. Appx. 432); LUMBRERAS-LINARES *v.* UNITED STATES (176 Fed. Appx. 437); and DELGADO-CASTILLO, AKA RUIZ-CASTILLO *v.* UNITED STATES (180 Fed. Appx. 500). C. A. 5th Cir.;

No. 06–5167. AURELIEN *v.* UNITED STATES. C. A. 11th Cir. Reported below: 177 Fed. Appx. 15;

No. 06–5185. RIVAS-MEDINA *v.* UNITED STATES. C. A. 5th Cir. Reported below: 177 Fed. Appx. 380;

No. 06–5187. MARTINEZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Reported below: 176 Fed. Appx. 502;

No. 06–5266. IROKO *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Reported below: 168 Fed. Appx. 681;

No. 06–5862. ANDRADE-MESA *v.* UNITED STATES. C. A. 5th Cir. Reported below: 185 Fed. Appx. 383;

No. 06–6023. RIVERA-GRIJALVA *v.* UNITED STATES. C. A. 9th Cir. Reported below: 177 Fed. Appx. 633; and

No. 06–6078. FLORES-HUERTA *v.* UNITED STATES. C. A. 5th Cir. Reported below: 185 Fed. Appx. 379. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Lopez* v. *Gonzales*, *ante*, p. 47.

Miscellaneous Orders

No. 06M51. CALKINS *v.* AYRES, WARDEN; and

No. 06M52. JOHNSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 05–1345. UNITED HAULERS ASSN., INC., ET AL. *v.* ONEIDA-HERKIMER SOLID WASTE MANAGEMENT AUTHORITY ET AL. C. A. 2d Cir. [Certiorari granted, 548 U. S. 941.] Mo-

tion of Rockland Coalition for Democracy and Freedom et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied. Motion of New York for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–1508. ZUNI PUBLIC SCHOOL DISTRICT NO. 89 ET AL. *v.* DEPARTMENT OF EDUCATION ET AL. C. A. 10th Cir. [Certiorari granted, 548 U. S. 941.] Motion of respondents for divided argument granted.

No. 05–1589. DAVENPORT ET AL. *v.* WASHINGTON EDUCATION ASSN.; and

No. 05–1657. WASHINGTON *v.* WASHINGTON EDUCATION ASSN. Sup. Ct. Wash. [Certiorari granted, 548 U. S. 942.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of petitioners for divided argument and additional time for oral argument denied.

No. 06–102. SINOCHEM INTERNATIONAL CO. LTD. *v.* MALAYSIA INTERNATIONAL SHIPPING CORP. C. A. 3d Cir. [Certiorari granted, 548 U. S. 942.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–7017. IN RE BELL. Petition for writ of mandamus denied.

Certiorari Denied

No. 05–6764. ALLEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 406 F. 3d 940.

No. 06–192. HARRELL *v.* UNITED STATES POSTAL SERVICE. C. A. 7th Cir. Certiorari denied. Reported below: 445 F. 3d 913.

No. 06–291. MONTANA BOARD OF INVESTMENTS *v.* DEUTSCH BANK SECURITIES, INC. Ct. App. N. Y. Certiorari denied. Reported below: 7 N. Y. 3d 65, 850 N. E. 2d 1140.

No. 06–317. ROSARIO *v.* KEN-CREST SERVICES. C. A. 3d Cir. Certiorari denied. Reported below: 189 Fed. Appx. 79.

No. 06–329. DUFF ET VIR *v.* LEWIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 766.

No. 06–485. TiVo, Inc. *v.* EchoStar Communications Corp. et al. (Reported below: 448 F. 3d 1294); and TiVo, Inc. *v.* Knearl et al. (184 Fed. Appx. 955). C. A. Fed. Cir. Certiorari denied.

No. 06–487. Jefferds Corp., dba Homestead Materials Handling Co. *v.* Morris; and

No. 06–503. Crown Equipment Corp. *v.* Morris. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 219 W. Va. 347, 633 S. E. 2d 292.

No. 06–488. Mickens et ux. *v.* Stewart Title Guaranty Co. et al. C. A. 11th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 865.

No. 06–490. George *v.* New York City Department of City Planning et al. C. A. 2d Cir. Certiorari denied. Reported below: 436 F. 3d 102.

No. 06–493. Quicken Loans, Inc. *v.* DuFauchard, Commissioner, California Department of Corporations. C. A. 9th Cir. Certiorari denied. Reported below: 449 F. 3d 944.

No. 06–500. Zudell *v.* Hudson, Warden. C. A. 6th Cir. Certiorari denied.

No. 06–510. Hillsboro Properties et al. *v.* City of Rohnert Park, California, et al. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 138 Cal. App. 4th 379, 41 Cal. Rptr. 3d 441.

No. 06–515. M2 Software, Inc. *v.* M2 Communications, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 450 F. 3d 1378.

No. 06–555. Rowen *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 642.

No. 06–556. Stumpo *v.* Commissioner of Internal Revenue. C. A. 6th Cir. Certiorari denied.

No. 06–572. Chavez Ayon *v.* California Department of Corrections et al. C. A. 9th Cir. Certiorari denied.

No. 06–597. Gonzalez *v.* Martinez-Aguero. C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 3d 618.

No. 06–620. ARCINIAGA *v.* GENERAL MOTORS CORP. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 3d 231.

No. 06–627. DEUTH, WARDEN *v.* GENTRY. C. A. 6th Cir. Certiorari denied. Reported below: 456 F. 3d 687.

No. 06–636. GOODMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 725.

No. 06–648. MILLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 450 F. 3d 270.

No. 06–650. JENKINS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 63 M. J. 426.

No. 06–654. WASHINGTON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 63 M. J. 418.

No. 06–5041. WEEDEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 663.

No. 06–5353. MAYFIELD *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 06–5529. CANADY *v.* MOORE, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–5689. N. J. Y. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 1.

No. 06–5739. MCCANEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 704.

No. 06–6332. VALENTINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6340. THOMPSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–6361. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 170 Fed. Appx. 240.

No. 06–6365. BURNS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6573. LINDSEY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 939 So. 2d 743.

No. 06–6716. HARKEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–6731. ALLISON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–6752. GRANDISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6835. WESNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7005. TROSTLE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–7010. CAMPBELL *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 447 F. 3d 270.

No. 06–7011. WHITE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–7021. PANNELL *v.* PENFOLD ET AL. Ct. App. Ind. Certiorari denied. Reported below: 834 N. E. 2d 747.

No. 06–7060. THOMAS *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 377.

No. 06–7089. WEAVER *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 438 F. 3d 832.

No. 06–7107. CRUTSINGER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 206 S. W. 3d 607.

No. 06–7117. MEHRA *v.* LEWINSON. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–7191. KOCSIS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–7192. JONES *v.* DRUG ENFORCEMENT ADMINISTRATION. C. A. D. C. Cir. Certiorari denied.

No. 06–7205. SIMMONDS *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 375.

No. 06–7303. ROWE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–7339. SLEZAK *v.* BURTT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 258.

No. 06–7341. MORENO MONZANO *v.* MALFI, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 605.

No. 06–7635. CANNON-STOKES *v.* POTTER, POSTMASTER GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 453 F. 3d 446.

No. 06–7647. SHEPHERD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 847.

No. 06–7659. CRUZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–7676. DUMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 310.

No. 06–7678. CAMARA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 196 Fed. Appx. 48.

No. 06–7679. EDWARDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7683. LANDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 349.

No. 06–7684. THOMAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 662.

No. 06–7686. ZULUAGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 944.

No. 06–7689. BAX *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–7692. AYALA-SORROSO *v.* UNITED STATES (Reported below: 197 Fed. Appx. 372); GARCIA-ARECHIGA, AKA RODRIGUEZ *v.* UNITED STATES (195 Fed. Appx. 248); MARTINEZ-MARTINEZ *v.* UNITED STATES (195 Fed. Appx. 235); CORTEZ-BERTIS *v.* UNITED STATES (199 Fed. Appx. 391); MARTINEZ-SANDOVAL, AKA MARTINEZ-SANTANA *v.* UNITED STATES (195 Fed. Appx. 228); GONZALEZ-RIVAS *v.* UNITED STATES (195 Fed. Appx. 247); DEL

ANGEL-HERNANDEZ *v.* UNITED STATES (195 Fed. Appx. 229); QUIROZ-GARZA *v.* UNITED STATES (195 Fed. Appx. 233); CARRAZCO-VILLANUEVA *v.* UNITED STATES (197 Fed. Appx. 376); AGUILAR-VASQUEZ *v.* UNITED STATES (195 Fed. Appx. 246); ROMERO-PORTILLO *v.* UNITED STATES (201 Fed. Appx. 965); RIOS-CRUZ *v.* UNITED STATES (197 Fed. Appx. 372); GONZALEZ-MONTIEL *v.* UNITED STATES (201 Fed. Appx. 967); PEREZ-INFANTE, AKA GUZMAN-RAMIREZ *v.* UNITED STATES (202 Fed. Appx. 53); ALVAREZ-FERMAN, AKA ALVAREZ, AKA ALVAREZ-CRUZ *v.* UNITED STATES (199 Fed. Appx. 359); BLANCO-HERNANDEZ *v.* UNITED STATES (196 Fed. Appx. 284); ALMAGUER-CONTRERAS, AKA GARCIA-PEREZ *v.* UNITED STATES (199 Fed. Appx. 357); CHAVEZ-MEDINA *v.* UNITED STATES (198 Fed. Appx. 390); LOPEZ-LOPEZ *v.* UNITED STATES (199 Fed. Appx. 357); MEDINA-MENDEZ *v.* UNITED STATES (199 Fed. Appx. 362); MARTINEZ-MARTINEZ *v.* UNITED STATES (202 Fed. Appx. 26); and BRIZUELA-BOJORQUEZ *v.* UNITED STATES (202 Fed. Appx. 12). C. A. 5th Cir. Certiorari denied.

No. 06–7696. EUBANKS *v.* O'BRIEN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 237.

No. 06–7697. SPENCER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 718.

No. 06–7699. WHITAKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 571.

No. 06–7700. DAVIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7701. EL-KAREH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 353.

No. 06–7703. CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–7705. SHELTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 220.

No. 06–7707. SAMUEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–7709. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–7716. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 704.

No. 06–7718. BILLINGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 350.

No. 06–7720. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 508.

No. 06–7722. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7728. TERRELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 728.

No. 06–7733. VALLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 3d 652.

No. 06–7736. THORNTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 733.

No. 06–7747. LEFKOWITZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 446 F. 3d 788.

No. 06–7751. LEVINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 166.

No. 06–7752. LONGORIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 699.

No. 06–7755. GARCIA-ANDRADE *v.* UNITED STATES (Reported below: 199 Fed. Appx. 624); MENDOZA-MENDOZA *v.* UNITED STATES (203 Fed. Appx. 847); TAPIA-AGUILERA *v.* UNITED STATES (202 Fed. Appx. 263); and VILLANUEVA-ESCOBAR ET AL. *v.* UNITED STATES (199 Fed. Appx. 614). C. A. 9th Cir. Certiorari denied.

No. 06–28. LUTKEWITTE *v.* GONZALES, ATTORNEY GENERAL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 436 F. 3d 248.

No. 06–207. INGRAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KENNEDY and JUSTICE SOUTER would grant the petition for writ of certiorari. Reported below: 170 Fed. Appx. 974.

No. 06–526. WACHOVIA BANK, N. A. *v.* EASTMAN KODAK CO. ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE THOMAS and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 456 F. 3d 1277.

Rehearing Denied

No. 05–11041. HALL *v.* FLORIDA, *ante*, p. 839;

No. 05–11052. BOOKER *v.* INTERNATIONAL RIVERCENTER, DBA NEW ORLEANS HILTON RIVERSIDE & TOWERS, *ante*, p. 840;

No. 05–11083. BUTCHER *v.* CRAIG ET AL., *ante*, p. 840;

No. 05–11200. LINDENSMITH *v.* MICHIGAN, *ante*, p. 845;

No. 05–11231. IN RE KELLY, *ante*, p. 809;

No. 05–11301. GUTIERREZ BRUNO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 848;

No. 05–11302. GUTIERREZ BRUNO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 848;

No. 05–11613. ALEXIS *v.* HOLMES, DISTRICT DIRECTOR, BUFFALO, IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL., *ante*, p. 867;

No. 05–11616. PEARSON *v.* TURPIN, WARDEN, *ante*, p. 867;

No. 06–276. ARMSTRONG *v.* CITY OF CONYERS, GEORGIA, ET AL., *ante*, p. 995;

No. 06–292. ARMSTRONG *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, *ante*, p. 995;

No. 06–322. MORTERS *v.* AIKEN & SCOPTUR, S. C., ET AL., *ante*, p. 996;

No. 06–325. IN RE KAHN, *ante*, p. 992;

No. 06–5004. VINES *v.* ROBINSON, WARDEN, *ante*, p. 890;

No. 06–5051. POWELL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 893;

No. 06–5068. COOPER *v.* HUMPHREY, WARDEN, *ante*, p. 894;

No. 06–5096. BROWN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 895;

No. 06–5150. KELLY *v.* UNITED STATES, *ante*, p. 898;

No. 06–5310. CONNER *v.* MOBILE MINI, INC., *ante*, p. 907;

No. 06–5361. WRIGHT *v.* TRANSPORTATION SECURITY ADMINISTRATION, *ante*, p. 910;

No. 06–5420. BURRELL *v.* HENDERSON ET AL., *ante*, p. 913;

No. 06–5857. VUONG *v.* MANAGEMENT OF J. C. PENNEY'S CO. ET AL., *ante*, p. 962;

No. 06–5962. TWITTY *v.* UNITED STATES, *ante*, p. 935;

No. 06–6014. TA'ATI *v.* BOARD OF TRUSTEES OF MONTGOMERY COLLEGE, *ante*, p. 979;

No. 06–6036. BURDEN *v.* COLORADO, *ante*, p. 979; and

No. 06–6499. BUCK *v.* PATENT AND TRADEMARK OFFICE ET AL., *ante*, p. 1004. Petitions for rehearing denied.

DECEMBER 13, 2006

Miscellaneous Order

No. 06–8249 (06A569). IN RE DIAZ. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 06–8239 (06A565). DIAZ *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 945 So. 2d 1136.

No. 06–8312 (06A580). DIAZ *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 472 F. 3d 849.

DECEMBER 15, 2006

Dismissal Under Rule 46

No. 06–171. KATZ *v.* GREGORY. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 444 F. 3d 725.

JANUARY 3, 2007

Dismissal Under Rule 46

No. 06–645. CHAVEZ *v.* MARTINEZ. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 197 Fed. Appx. 639.

JANUARY 4, 2007

Dismissal Under Rule 46

No. 06–7706. PETERSON *v.* BROOKS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 196 Fed. Appx. 135.

JANUARY 5, 2007

Miscellaneous Orders

No. 06A644. AL-BANDAR *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Application for stay or injunctive relief, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

No. 05–1508. ZUNI PUBLIC SCHOOL DISTRICT NO. 89 ET AL. *v.* DEPARTMENT OF EDUCATION ET AL. C. A. 10th Cir. [Certiorari granted, 548 U. S. 941.] Motion of Public School Districts for leave to file a brief as *amici curiae* granted.

No. 05–9222. BURTON *v.* STEWART, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. [Certiorari granted *sub nom. Burton* v. *Waddington*, 547 U. S. 1178.] Motion of petitioner for leave to file a supplemental brief after argument granted. Motion of respondent for leave to file a supplemental brief after argument granted.

No. 05–11304. SMITH *v.* TEXAS. Ct. Crim. App. Tex. [Certiorari granted, *ante*, p. 948.] Motion of California et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted.

No. 06–84. SAFECO INSURANCE COMPANY OF AMERICA ET AL. *v.* BURR ET AL.; and

No. 06–100. GEICO GENERAL INSURANCE CO. ET AL. *v.* EDO. C. A. 9th Cir. [Certiorari granted, 548 U. S. 942.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–5618. CLAIBORNE *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1016.] Motion of petitioner for leave to file Volume II of the joint appendix under seal granted.

No. 06–5754. RITA *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1016.] Motion of petitioner for leave to file Volume II of the joint appendix under seal granted.

Certiorari Granted

No. 06–341. BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 10th Cir. Certiorari granted. Reported below: 450 F. 3d 476.

No. 06–427. TENNESSEE SECONDARY SCHOOL ATHLETIC ASSN. *v.* BRENTWOOD ACADEMY. C. A. 6th Cir. Certiorari granted. Reported below: 442 F. 3d 410.

No. 06–593. LONG ISLAND CARE AT HOME, LTD., ET AL. *v.* COKE. C. A. 2d Cir. Certiorari granted. Reported below: 462 F. 3d 48.

No. 06–340. NATIONAL ASSOCIATION OF HOME BUILDERS ET AL. *v.* DEFENDERS OF WILDLIFE ET AL.; and

No. 06–549. ENVIRONMENTAL PROTECTION AGENCY *v.* DEFENDERS OF WILDLIFE ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. In addition to the questions presented by the petitions, the parties are requested to brief and argue the following questions: "Whether the Court of Appeals correctly held that the Environmental Protection Agency's decision to transfer pollution permitting authority to Arizona under the Clean Water Act, see 33 U. S. C. § 1342(b), was arbitrary and capricious because it was based on inconsistent interpretations of § 7(a)(2) of the Endangered Species Act of 1973, 16 U. S. C. § 1536(a)(2); and, if so, whether the Court of Appeals should have remanded to the Environmental Protection Agency for further proceedings without ruling on the interpretation of § 7(a)(2)." Reported below: 420 F. 3d 946.

No. 06–484. TELLABS, INC., ET AL. *v.* MAKOR ISSUES & RIGHTS, LTD., ET AL. C. A. 7th Cir. Certiorari granted. Petitioners' brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, February 9, 2007. Respondents' brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, March 9, 2007. A reply brief, if any, is to be filed with the Clerk and served upon

opposing counsel on or before 2 p.m., Tuesday, March 20, 2007. Reported below: 437 F. 3d 588.

No. 06–606. ALTADIS USA, INC. *v.* SEA STAR LINE, LLC, ET AL. C. A. 11th Cir. Certiorari granted. Petitioner's brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, February 9, 2007. Respondents' brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, March 9, 2007. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Tuesday, March 20, 2007. Reported below: 458 F. 3d 1288.

No. 06–6407. PANETTI *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion for petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 448 F. 3d 815.

JANUARY 8, 2007

Certiorari Granted—Vacated and Remanded

No. 06–368. MOMAH *v.* DOMINGUEZ, CHAIR, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Burlington N. & S. F. R. Co.* v. *White*, 548 U. S. 53 (2006). Reported below: 175 Fed. Appx. 11.

No. 06–5318. SMITH *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the confession of error by the Solicitor General in his brief filed for respondent on November 13, 2006.

No. 06–6629. AYALA-FLORES *v.* UNITED STATES (Reported below: 186 Fed. Appx. 456); ARGUETA-HERNANDEZ, AKA HERNANDEZ-ARGUETA *v.* UNITED STATES (185 Fed. Appx. 376); ANALCO-ANALCO *v.* UNITED STATES (185 Fed. Appx. 384); CALLE-VILLAREAL, AKA CALLE *v.* UNITED STATES (196 Fed. Appx. 270); CONTRERAS-JIMENEZ *v.* UNITED STATES (195 Fed. Appx. 271); JIMENEZ-ESTEBAN *v.* UNITED STATES (195 Fed. Appx. 267); and CARRILLO-MONJEZ, AKA CAMPOS *v.* UNITED STATES (187 Fed. Appx. 369). C. A. 5th Cir.; and

No. 06–6766. TOSTADO-TOSTADO *v.* CARLSON, INTERIM DEPUTY FIELD OFFICE DIRECTOR, ST. LOUIS, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT. C. A. 8th Cir. Reported below: 437 F. 3d 706. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Lopez* v. *Gonzales*, *ante*, p. 47.

Certiorari Dismissed

No. 06–7002. SUDDUTH, AKA MUHAMMAD *v.* SCIULLI ET UX. Super. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 880 A. 2d 19.

No. 06–7223. ALLEN *v.* NEVADA. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–7326. ANDERSON *v.* SAAR, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 197 Fed. Appx. 247.

No. 06–7327. BARBER *v.* PERDUE, GOVERNOR OF GEORGIA, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–7414. COX *v.* BATTRICK ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–7420. ERDMAN *v.* STEGALL, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–7605. BAYRAMOGLU *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–7691. AZUBUKO *v.* MBNA AMERICA BANK ET AL. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE BREYER took no part in the consideration or decision of this motion and this petition. Reported below: 179 Fed. Appx. 66.

No. 06–7817. BRUZON *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2444. IN RE FLEMING. Clarence Edwin Fleming, of Pasadena, Cal., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on October 10, 2006 [*ante*, p. 949], is discharged.

No. D–2445. IN RE KAUFMAN. Jack H. Kaufman, Jr., of San Clemente, Cal., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on October 10, 2006 [*ante*, p. 949], is discharged.

No. D–2448. IN RE DISBARMENT OF WHALLEY. Disbarment entered. [For earlier order herein, see *ante*, p. 950.]

No. 06M53. PERRY *v.* SIEGELMAN ET AL.; and

No. 06M56. QUINONES *v.* NEIGHBORHOOD YOUTH AND FAMILY. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06M54. QUANTA COMPUTER, INC., ET AL. *v.* LG ELECTRONICS, INC. Motion of petitioners for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 06M55. EASLEY *v.* AMERITECH CORP. ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 06–157. HEIN, DIRECTOR, WHITE HOUSE OFFICE OF FAITH-BASED AND COMMUNITY INITIATIVES, ET AL. *v.* FREEDOM FROM RELIGION FOUNDATION, INC., ET AL. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1074.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 06–457. ROWE, ATTORNEY GENERAL OF MAINE *v.* NEW HAMPSHIRE MOTOR TRANSPORT ASSN. ET AL. C. A. 1st Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 06–5102. IN RE ERDMAN. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 808] denied.

No. 06–7072. CRAMER *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of San Diego; and

No. 06–8142. CARTER *v.* UNITED STATES. C. A. 10th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 29, 2007, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 06–8447. PARACHA *v.* GATES, SECRETARY OF DEFENSE, ET AL. C. A. D. C. Cir.;

No. 06–8448. IN RE PARACHA; and

No. 06–8449. IN RE PARACHA. Motion of petitioner to expedite consideration of the petitions denied.

No. 06–7910. IN RE YVANEZ;

No. 06–7995. IN RE KATES;

No. 06–7999. IN RE KISSANE;

No. 06–8158. IN RE RAY;

No. 06–8240. IN RE SMOCKS; and

No. 06–8369. IN RE PROCTOR. Petitions for writs of habeas corpus denied.

No. 06–7130. IN RE HICKS;

No. 06–7268. IN RE KING;

No. 06–7502. IN RE BLAMEY;

No. 06–7552. IN RE REDFORD;

No. 06–7562. IN RE THOMPSON;

No. 06–7597. IN RE HENDERSON;

No. 06–7818. IN RE BUTLER; and

No. 06–7893. IN RE TURNER. Petitions for writs of mandamus denied.

No. 06–536. IN RE FODOR. Petition for writ of mandamus denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 06–8058. IN RE SPEARS. Petition for writ of prohibition denied.

Certiorari Denied

No. 05–1076. PADOT *v.* PADOT. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 891 So. 2d 1079.

No. 06–66. RICHARDS-DIAZ *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 10.

No. 06–130. PALAKOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. *v.* THOMAS. C. A. 3d Cir. Certiorari denied. Reported below: 428 F. 3d 491.

No. 06–170. LOCKHART *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 446 F. 3d 721.

No. 06–211. GILMORE *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 435 F. 3d 1125.

No. 06–224. DAVIS *v.* STRAUB, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 430 F. 3d 281.

No. 06–236. GARCIA Y GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 873.

No. 06–237. PRINZING *v.* SCHWAB. Ct. App. Minn. Certiorari denied.

No. 06–241. RAHMANI ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 426 F. 3d 1150.

No. 06–250. OPERATORS & CONSULTING SERVICES, INC., ET AL. *v.* DIRECTOR, OFFICE OF WORKER'S COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 931.

No. 06–260. GOODIN *v.* UNITED STATES POSTAL INSPECTION SERVICE. C. A. 8th Cir. Certiorari denied. Reported below: 444 F. 3d 998.

No. 06–304. TIPPIE *v.* SPACELABS MEDICAL, INC. C. A. 11th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 51.

No. 06–318. ALTAMIRANO HERNANDEZ *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 896.

No. 06–344. MINERAL COUNTY, MONTANA, ET AL. *v.* ECOLOGY CENTER, INC. C. A. 9th Cir. Certiorari denied. Reported below: 430 F. 3d 1057.

No. 06–345. DARAIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 445 F. 3d 253.

No. 06–360. VASEK *v.* MT. SAN JACINTO COLLEGE DISTRICT ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 06–383. BERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 406.

No. 06–389. RIVERBOAT SERVICES OF INDIANA, INC., ET AL. *v.* GAFFNEY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 451 F. 3d 424.

No. 06–394. FLIGIEL *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. 6th Cir. Certiorari denied. Reported below: 440 F. 3d 747.

No. 06–401. WEXLER, UNITED STATES CONGRESSMAN, ET AL. *v.* ANDERSON, SUPERVISOR OF ELECTIONS FOR PALM BEACH COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 452 F. 3d 1226.

No. 06–408. ACACIA MORTGAGE CORP. *v.* JOFFE. Ct. App. Ariz. Certiorari denied. Reported below: 211 Ariz. 325, 121 P. 3d 831.

No. 06–432. HERNANDEZ-CASTILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 449 F. 3d 1127.

No. 06–438. SHELBY S., BY NEXT FRIEND, KATHLEEN T. *v.* CONROE INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 454 F. 3d 450.

No. 06–448. CLAYTON *v.* AMERIQUEST MORTGAGE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 479.

No. 06–455. HAMILTON *v.* ROYAL INTERNATIONAL PETROLEUM CORP. ET AL. Sup. Ct. La. Certiorari denied. Reported below: 934 So. 2d 25.

No. 06–456. IN RE SEALED CASE. C. A. 2d Cir. Certiorari denied.

No. 06–460. WHITING *v.* UNIVERSITY OF SOUTHERN MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 451 F. 3d 339.

No. 06–486. LOG FURNITURE, INC., ET AL. *v.* CALL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 785.

No. 06–494. CARMOUCHE ET AL. *v.* CENTER FOR INDIVIDUAL FREEDOM. C. A. 5th Cir. Certiorari denied. Reported below: 449 F. 3d 655.

No. 06–498. MCGINNIS *v.* ARCO PIPE LINE CO. C. A. 5th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 314.

No. 06–514. SWINDELL *v.* FLORIDA EAST COAST RAILWAY CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 989.

No. 06–520. STILLEY *v.* MARSCHEWSKI, JUDGE, 12TH JUDICIAL CIRCUIT COURT, SEBASTIAN COUNTY, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 611.

No. 06–527. MAULDING DEVELOPMENT, LLC *v.* CITY OF SPRINGFIELD, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 453 F. 3d 967.

No. 06–540. TROJANEK *v.* SAFEWAY, INC., ET AL. Ct. App. Ariz. Certiorari denied.

No. 06–544. FOX *v.* PRUDENTIAL FINANCIAL, DBA PRUDENTIAL SECURITIES INC., FKA PRUDENTIAL INSURANCE, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 915.

No. 06–545. ECHOSTAR COMMUNICATIONS CORP. ET AL. *v.* FOX BROADCASTING CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 450 F. 3d 505.

No. 06–546. JENSEN *v.* SWEET HOME ONE CARE FACILITY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 703.

No. 06–550. VASKIV *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 939 So. 2d 1061.

No. 06–557. URBAN BRANDS INC. *v.* RODRIGUEZ OQUENDO. Sup. Ct. P. R. Certiorari denied.

No. 06–558. SROGONCIK ET UX. *v.* NICKLOW ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 887 A. 2d 845.

No. 06–559. SCHACK, PERSONAL REPRESENTATIVE OF THE ESTATE OF SCHACK, DECEASED *v.* CITY OF TAYLOR, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 469.

No. 06–561. SMITH *v.* COOK ET AL. Sup. Ct. Va. Certiorari denied.

No. 06–566. MBABA ET UX. *v.* SOCIETE AIR FRANCE. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 3d 496.

No. 06–579. RODRIGUEZ-PEREZ ET AL. *v.* ESSO STANDARD OIL CO. C. A. 1st Cir. Certiorari denied. Reported below: 455 F. 3d 1.

No. 06–581. ALLEGRETTI & CO. *v.* IMPERIAL COUNTY, CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 138 Cal. App. 4th 1261, 42 Cal. Rptr. 3d 122.

No. 06–583. UNIVERSAL CHURCH *v.* GELTZER, TRUSTEE OF THE ESTATE OF BOISROND. C. A. 2d Cir. Certiorari denied. Reported below: 463 F. 3d 218.

No. 06–584. MURRAY *v.* FERREIRA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 06–587. OKLAHOMA ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 701.

No. 06–594. BURGESS *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE. C. A. 3d Cir. Certiorari denied. Reported below: 176 Fed. Appx. 331.

No. 06–598. HAGOOD *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE. C. A. 6th Cir. Certiorari denied. Reported below: 176 Fed. Appx. 660.

No. 06–599. SPOFFORD *v.* SPOFFORD, NKA ADAMS. Ct. App. Colo. Certiorari denied.

No. 06–607. KAHRE *v.* SWISS CASINOS OF AMERICA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 162 Fed. Appx. 782.

No. 06–608. GRACE, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF GRACE, ET AL. *v.* BANK LEUMI TRUST COMPANY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 443 F. 3d 180.

No. 06–609. TARTER *v.* GREGORY. C. A. 6th Cir. Certiorari denied. Reported below: 444 F. 3d 725.

No. 06–611. GREEN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 941 So. 2d 367.

No. 06–613. MEYERS *v.* CITY OF LITTLETON, COLORADO, ET AL. Dist. Ct. Colo., Arapahoe County. Certiorari denied.

No. 06–614. RUBIN-SCHNEIDERMAN *v.* MERIT BEHAVIORAL CARE CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 193 Fed. Appx. 70.

No. 06–615. SEARCY *v.* 3 DAY BLINDS INC. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 583.

No. 06–617. RIFFIN *v.* MARYLAND DEPARTMENT OF THE ENVIRONMENT ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 167 Md. App. 770, 773.

No. 06–621. SHIELDS *v.* SHIELDS. Ct. Sp. App. Md. Certiorari denied. Reported below: 168 Md. App. 777.

No. 06–624. TAVERNA *v.* PENNSYLVANIA BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS, STATE BOARD OF DENTISTRY. Commw. Ct. Pa. Certiorari denied.

No. 06–625. DUNN *v.* CSX TRANSPORTATION, INC. C. A. 11th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 867.

No. 06–630. OFFICE OF SENATOR BEN NIGHTHORSE CAMPBELL *v.* BASTIEN. C. A. 10th Cir. Certiorari denied. Reported below: 454 F. 3d 1072.

No. 06–631. NAJM *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–632. O'BRIEN, TRUSTEE ON BEHALF OF MINOR-PLAINTIFFS O'BRIEN ET AL., ET AL. *v.* VALLEY FORGE SPECIAL EDUCATIONAL SERVICES, DBA CROSSROADS SCHOOL. C. A. 3d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 977.

No. 06–634. FASANO *v.* FEDERAL RESERVE BANK OF NEW YORK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 457 F. 3d 274.

No. 06–635. SMITH ET AL. *v.* CITY OF CHICAGO, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 457 F. 3d 643.

No. 06–640. CANNADY *v.* FRANZ ET AL. Sup. Ct. Fla. Certiorari denied.

No. 06–642. CASTILLO-ARIAS ET AL. *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 446 F. 3d 1190.

No. 06–644. CRAIGMYLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 584.

No. 06–647. GRAHAM *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 143 P. 3d 268.

No. 06–649. MCKINLEY *v.* OHIO INDUSTRIAL COMMISSION. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 06–656. COY/SUPERIOR TEAM *v.* BNFL, INC. C. A. 6th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 901.

No. 06–657. RENT-A-CENTER, INC. *v.* PEREZ. Sup. Ct. N. J. Certiorari denied. Reported below: 186 N. J. 188, 892 A. 2d 1255.

No. 06–660. LEISURE TIME ENTERTAINMENT, INC. *v.* CAL VISTA INTERNATIONAL, LTD. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 689.

No. 06–661. ADAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 571.

No. 06–664. RHODES *v.* TOWN OF ALEXANDER, NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 28 App. Div. 3d 1175, 813 N. Y. S. 2d 332.

No. 06–665. KANT ET UX. *v.* BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 250.

No. 06–668. THOMAS M. COOLEY LAW SCHOOL *v.* AMERICAN BAR ASSN. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 459 F. 3d 705.

No. 06–671. ST. LUKE'S SUBACUTE HOSPITAL & NURSING CENTRE, INC., ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 711.

No. 06–675. PAULSON *v.* OREGON STATE BAR ET AL. Sup. Ct. Ore. Certiorari denied. Reported below: 341 Ore. 13, 136 P. 3d 1087.

No. 06–679. UTGARD *v.* CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 06–680. ZARIF *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 784.

No. 06–683. BURCH *v.* PHILIP MORRIS USA, INC. C. A. 4th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 361.

No. 06–687. GOROSPE ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 451 F. 3d 966.

No. 06–688. MOTLEY *v.* VIRGINIA STATE BAR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 191.

No. 06–689. PLATINUM FINANCIAL SERVICES CORP. ET AL. *v.* DELAWDER. C. A. 6th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 369.

No. 06–690. WELCH-BROWN ET AL. *v.* BELL ET AL. Sup. Ct. Ala. Certiorari denied.

No. 06–696. NADER ET AL. *v.* SERODY ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 588 Pa. 450, 905 A. 2d 450.

No. 06–697. NEIGHBORHOOD FOOD MART *v.* KENTUCKY CABINET FOR HEALTH SERVICES. Ct. App. Ky. Certiorari denied.

No. 06–700. APPERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 441 F. 3d 1162.

No. 06–703. TURNER *v.* JACKSON, SECRETARY OF HOUSING AND URBAN DEVELOPMENT. C. A. 3d Cir. Certiorari denied. Reported below: 449 F. 3d 536.

No. 06–708. GIBBS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 258.

No. 06–709. GRAYSON *v.* KING, ATTORNEY GENERAL OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 460 F. 3d 1328.

No. 06–712. WYTTENBACH *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 323.

No. 06–717. SMITH *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 291 Wis. 2d 569, 716 N. W. 2d 482.

No. 06–718. JERDINE *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 06–720. RAINEY *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 197 S. W. 3d 89.

No. 06–725. THOMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 185.

No. 06–727. IN RE GRAND JURY PROCEEDINGS. C. A. 3d Cir. Certiorari denied.

No. 06–734. CAB PRODUKTTECHNIK GMBH & CO. KG *v.* THARO SYSTEMS, INC. C. A. 6th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 366.

No. 06–741. TAPSS, LLC *v.* NUNEZ CO. C. A. 5th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 200.

No. 06–771. ROSE *v.* UNITED STATES (Reported below: 64 M. J. 56); AUSTIN *v.* UNITED STATES (64 M. J. 200); ENZ *v.* UNITED STATES (64 M. J. 200); JOHNSON *v.* UNITED STATES (64 M. J. 199); JOHNSTON *v.* UNITED STATES (64 M. J. 199); MCINTYRE *v.* UNITED STATES (64 M. J. 201); METZIG *v.* UNITED STATES (64 M. J. 201); MYERS *v.* UNITED STATES (64 M. J. 200); PERRY *v.* UNITED STATES (64 M. J. 200); SCHWARTZ *v.* UNITED STATES (64 M. J. 199); and STEPHENS *v.* UNITED STATES (64 M. J. 199). C. A. Armed Forces. Certiorari denied.

No. 06–774. BOBO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 885.

No. 06–814. HAWKINS ET AL. *v.* FREW ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 3d 432.

No. 06–5230. PREVATTE *v.* WILEY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 39.

No. 06–5298. SCHERRER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 444 F. 3d 91.

No. 06–5409. HOOD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 185 S. W. 3d 445.

No. 06–5659. HOBGOOD *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 926 So. 2d 847.

No. 06–5687. GOMEZ-DIAZ, AKA FLORES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 06–5727. JIMENEZ-BELTRE, AKA PEREZ, AKA CINTRON, AKA GUZMAN-RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 440 F. 3d 514.

No. 06–5881. ALEXANDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 448 F. 3d 1014.

No. 06–5888. CANALES-SIGUENZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 282.

No. 06–5941. CARTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 807.

No. 06–5968. FOSTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–6159. CHAMORRO-RESENDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 864.

No. 06–6188. WINSTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–6262. BALTIMORE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 881 A. 2d 878.

No. 06–6279. HAVARD *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 928 So. 2d 771.

No. 06–6435. BILLINGS *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 441 F. 3d 238.

No. 06–6440. CASTEEL *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 356, 131 P. 3d 1.

No. 06–6487. INIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 670.

No. 06–6523. COLEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 215.

No. 06–6526. MURPHY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–6539. SWANSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–6557. CHERRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 436 F. 3d 769.

No. 06–6564. ROJO *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 25.

No. 06–6589. MEARS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 998.

No. 06–6639. JACKSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 450 F. 3d 614.

No. 06–6642. SAUNDERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 265.

No. 06–6688. MORENO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 450 F. 3d 158.

No. 06–6697. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 916.

No. 06–6772. BECKWORTH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 946 So. 2d 490.

No. 06–6852. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 399.

No. 06–6879. SEGLER *v.* CITY OF GREENWOOD VILLAGE, COLORADO. Ct. App. Colo. Certiorari denied.

No. 06–6912. PARR *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–6921. WIDEMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 758.

No. 06–6953. CHATMAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 38 Cal. 4th 344, 133 P. 3d 534.

No. 06–6985. BROWN *v.* MILLER, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 451 F. 3d 54 and 185 Fed. Appx. 25.

No. 06–7020. PLANCK *v.* NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 30 App. Div. 3d 725, 816 N. Y. S. 2d 241.

No. 06–7027. PATRICK *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7029. MYERS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 133 P. 3d 312.

No. 06–7030. PURDIE-PAGAN *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 06–7046. LESLEY *v.* DAVID. C. A. 11th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 926.

No. 06–7053. PARRISH *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 934 So. 2d 470.

No. 06–7055. MEHDIPOUR *v.* PARKER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 716.

No. 06–7056. JONES *v.* HULICK, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 449 F. 3d 784.

No. 06–7057. JOHNSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 935 So. 2d 1220.

No. 06–7062. RIVERA *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7063. REYNOLDS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 251.

No. 06–7064. SZAREWICZ *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 903 A. 2d 54.

No. 06–7067. MONTIONE *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–7094. FOSTER *v.* FORD MOTOR CREDIT CO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 06–7101. RAMIREZ *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 932 So. 2d 206.

No. 06–7103. SANDERS *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 631.

No. 06–7104. CAGLE *v.* ST. JOHNS COUNTY SCHOOL DISTRICT ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 930 So. 2d 621.

No. 06–7109. SHOAF *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 929 So. 2d 1054.

No. 06–7115. BOLT *v.* BOUCHARD, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–7119. QUANG TRUNG NGUYEN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORREC-

TIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–7124. WILLIAMS *v.* DES ARC CITY POLICE DEPARTMENT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 540.

No. 06–7125. TOBEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 937 So. 2d 1100.

No. 06–7129. GASPAR *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–7132. HUNTER *v.* HOWARD COUNTY HOUSING COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 623.

No. 06–7139. JACKSON *v.* KELLY, WARDEN. Sup. Ct. Va. Certiorari denied. Reported below: 271 Va. 434, 627 S. E. 2d 776.

No. 06–7143. REYNOLDS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 934 So. 2d 1128.

No. 06–7147. JOHNSTON *v.* BLACKETTER, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 410.

No. 06–7149. COCHRAN *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 843 N. E. 2d 980.

No. 06–7152. MITCHELL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–7156. LUCKETT *v.* HARDCASTLE ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–7160. OCCHICONE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 455 F. 3d 1306.

No. 06–7171. THOMAS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 933 So. 2d 788.

No. 06–7176. SLADE *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7184. JOHNSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–7187. WANZER *v.* KIM THU THI CHU ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 898.

No. 06–7188. PETERSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–7197. JACKSON *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 452 F. 3d 734.

No. 06–7204. SALAZAR *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 06–7211. JONES *v.* GEORGIA. Super. Ct. Ware County, Ga. Certiorari denied.

No. 06–7212. WILLIAMS *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7213. VENTRY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–7214. WYNN *v.* BYRD, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–7218. ALBRECHT *v.* OREGON STATE BAR. Sup. Ct. Ore. Certiorari denied.

No. 06–7222. ANDREWS *v.* FOX, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 781.

No. 06–7226. BEST *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 165 Fed. Appx. 740.

No. 06–7227. ARCHIE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–7254. ALLEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–7257. KEHRES *v.* PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 182 Fed. Appx. 112.

No. 06–7260. CORBIN *v.* WELLS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 932 So. 2d 195.

No. 06–7261. CATALDO *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7267. GALLUZZO *v.* COURT OF COMMON PLEAS OF OHIO, CHAMPAIGN COUNTY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 21.

No. 06–7273. REED *v.* FULTON COUNTY GOVERNMENT. C. A. 11th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 674.

No. 06–7274. SYLLA *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 240.

No. 06–7275. SIMMONS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–7277. DUNN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–7279. GALLUZZO *v.* OHIO. Ct. App. Ohio, Champaign County. Certiorari denied.

No. 06–7281. OYEJOLA *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 190.

No. 06–7285. SPEARS *v.* SPITZER, ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 459 F. 3d 200.

No. 06–7287. ATWATER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 451 F. 3d 799.

No. 06–7291. ALVAREZ *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–7299. SOLIS *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 658.

No. 06–7304. SHERRILL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 354 Ill. App. 3d 1163, 883 N. E. 2d 1150.

No. 06–7307. MCCALLUM *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–7313. LENOIR *v.* CABANA. C. A. 5th Cir. Certiorari denied.

No. 06–7318. CHAPMAN *v.* ARLINGTON HOUSING AUTHORITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 496.

No. 06–7323. BASKETT *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 06–7325. BUTLER *v.* RAY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 260.

No. 06–7328. BUFFIN *v.* WILKINSON, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–7329. BIERLEY *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 3d Cir. Certiorari denied. Reported below: 188 Fed. Appx. 117.

No. 06–7330. BREWSTER *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 701.

No. 06–7332. BRIGGS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 06–7335. MORRIS *v.* YLST, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 447 F. 3d 735.

No. 06–7336. OBERSHAW *v.* LANMAN ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 453 F. 3d 56.

No. 06–7342. PERKINS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–7345. JOLLEY *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 06–7346. KELLEY *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7353. JIMENEZ CORREAL *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 06–7354. BLOUNT *v.* BATTAGLIA, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 515.

No. 06–7359. PANTANO *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 782, 138 P. 3d 477.

No. 06–7369. GRIFFITH *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 237.

No. 06–7370. HORNE *v.* MCCALL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 246.

No. 06–7371. SETTS *v.* DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT. C. A. 11th Cir. Certiorari denied.

No. 06–7372. FUENTES RIOS *v.* MALFI, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–7373. MEDERS *v.* SCHOFIELD, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 280 Ga. 865, 632 S. E. 2d 369.

No. 06–7374. RODRIGUEZ-MACIAS, AKA RODRIGUEZ MACIAS *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 06–7379. DAVENPORT *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 06–7382. EVICCI *v.* FICCO, SUPERINTENDENT, SOUZA-BARANOWSKI CORRECTIONAL CENTER, ET AL. App. Ct. Mass. Certiorari denied. Reported below: 66 Mass. App. 1105, 846 N. E. 2d 792.

No. 06–7387. JOHNSON *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–7390. JACKSON *v.* HOLT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–7391. MOORE *v.* EGAN ET AL. Ct. App. Mich. Certiorari denied.

No. 06–7394. BROADWAY *v.* MALFI, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–7395. BADIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 933.

No. 06–7396. ALEXANDER *v.* MARSHALL FIELD & CO. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1224, — N. E. 2d —.

No. 06–7399. CARTER *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 443 F. 3d 517.

No. 06–7401. PEREZ *v.* AYRES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 450.

No. 06–7405. LINDER *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 139 Cal. App. 4th 75, 42 Cal. Rptr. 3d 496.

No. 06–7410. WEAVER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–7411. DAVIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 935 So. 2d 1.

No. 06–7413. CROMPTON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–7415. DRAYTON *v.* ROBINSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 260.

No. 06–7416. TEDESCO *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 752.

No. 06–7417. TYSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 06–7421. ZHENLU ZHANG *v.* SCIENCE & TECHNOLOGY CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 177.

No. 06–7422. WINBERRY *v.* ENGLEHART, SHERIFF, PASSAIC COUNTY, NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 06–7430. DAVIS *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 06–7432. BATTEAS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 06–7434. EDWARDS *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7436. CAMPBELL *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 395.

No. 06–7443. ROTH *v.* BOARD OF EDUCATION OF GENESEO UNIT SCHOOL DISTRICT NO. 228. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 359 Ill. App. 3d 1212, 904 N. E. 2d 1248.

No. 06–7446. SOLTERO *v.* RICE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–7455. HITCHENS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 06–7456. HARDY *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 06–7459. MARLIN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 06–7462. CORDERO-HERNANDEZ *v.* HERNANDEZ-BALLESTEROS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 449 F. 3d 240.

No. 06–7463. CERVANTES *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 690.

No. 06–7464. CARTER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 925 So. 2d 503.

No. 06–7465. TROSTLE *v.* AVERY. C. A. 6th Cir. Certiorari denied.

No. 06–7466. PETERS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 28 App. Div. 3d 686, 812 N. Y. S. 2d 372.

No. 06–7467. MCGOUGHY *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7471. KOEHL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 22 App. Div. 3d 601, 801 N. Y. S. 2d 754.

No. 06–7473. TAYLOR *v.* CITY OF CLEVELAND, OHIO, DEPARTMENT OF PUBLIC HEALTH ET AL. (two judgments). C. A. 6th Cir. Certiorari denied.

No. 06–7480. BALINT *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied. Reported below: 138 Cal. App. 4th 200, 41 Cal. Rptr. 3d 211.

No. 06–7484. BISHOP *v.* WESTERN SURETY CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 622.

No. 06–7485. BURLEIGH *v.* BALDACCI ET AL. C. A. 1st Cir. Certiorari denied.

No. 06–7488. PEREZ ORTIZ *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 869 So. 2d 1278.

No. 06–7489. RAMEY *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 607.

No. 06–7490. CRAIG ET VIR *v.* TUSCARAWAS COUNTY JOB AND FAMILY SERVICES ET AL. Ct. App. Ohio, Tuscarawas County. Certiorari denied.

No. 06–7495. TOLEDO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 939 So. 2d 1061.

No. 06–7496. PAGE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–7498. BRACEWELL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 978 So. 2d 83.

No. 06–7499. ORTEGA APRECIADO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–7504. ANTHONY *v.* FREY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–7505. WALKER *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 843 N. E. 2d 50.

No. 06–7511. BABB *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 885.

No. 06–7512. JAFFE *v.* ST. LUKE'S MEDICAL CENTER, LP, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 659.

No. 06–7513. JENKINS *v.* FAIRMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–7515. PAYTON *v.* KRAMER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 584.

No. 06–7516. HENRICKSEN *v.* HARTFORD LIFE AND ACCIDENT INSURANCE. C. A. 8th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 561.

No. 06–7527. GOMEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–7528. HILLS *v.* KENTUCKY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 457 F. 3d 583.

No. 06–7529. GORA *v.* ROMANOWSKI, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7530. MILLER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 126.

No. 06–7533. FINNEY *v.* MOSLEY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–7534. HEATHERLY *v.* MISSISSIPPI (four judgments). Sup. Ct. Miss. Certiorari denied.

No. 06–7535. HENDRICKSON *v.* DAVIS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 48.

No. 06–7536. FAULCON *v.* PALAKOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–7537. HITTER *v.* HAGAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 237.

No. 06–7538. GARCIA *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–7539. HANN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–7540. JACOBS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 06–7541. SIMMONS *v.* AYRES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–7542. MUJADZIC *v.* HOTEL GOVERNOR. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 119.

No. 06–7544. MELTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 428.

No. 06–7545. GALLOWAY *v.* CARTER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7546. FREEMAN *v.* DAVISON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–7550. RODGERS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 06–7551. SPENCER *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 937 So. 2d 132.

No. 06–7554. ROBERTS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–7555. RUSS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 06–7556. MAINA *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 577.

No. 06–7560. HAMPTON *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 213 Ariz. 167, 140 P. 3d 950.

No. 06–7566. TURNER *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 06–7567. BRATTON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–7569. BROWN *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 199 Fed. Appx. 107.

No. 06–7570. GOINS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–7572. BIERLEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 888 A. 2d 2.

No. 06–7574. ANDRADE *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 3d 538.

No. 06–7575. ACOSTA *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 473.

No. 06–7579. DE SUSTAR-WARE *v.* NORDSTROM, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 245.

No. 06–7583. SOTO *v.* AYDAR ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–7590. GOTTSCHALK *v.* DAHL, ACTING SUPERINTENDENT, YUKON-KUSKOKWIM CORRECTIONAL CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 591.

No. 06–7595. SCOTT ET AL. *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–7596. RIVERA *v.* CORBETT, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–7598. SCHNELLER *v.* ABLE HOME CARE, INC., ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 895 A. 2d 654.

No. 06–7599. FOSS *v.* HALL COUNTY CHILD SUPPORT OFFICE. C. A. 8th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 702.

No. 06–7602. FIGEL *v.* ABDELLATIF ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–7603. JIMENEZ *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 458 F. 3d 130.

No. 06–7608. BENNETT *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 933 So. 2d 930.

No. 06–7610. SHERMAN *v.* AUSTIN STATE HOSPITAL. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 06–7612. ANSTEY *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 476 Mich. 436, 719 N. W. 2d 579.

No. 06–7615. SINAI *v.* VERIZON WIRELESS, INC., ET AL. C. A. 1st Cir. Certiorari denied.

No. 06–7627. HULETT *v.* BRINK'S HOME SECURITY, INC. C. A. 8th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 641.

No. 06–7628. LAGUANA *v.* ISHIZAKI, DIRECTOR, GUAM DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–7629. LONG *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 06–7634. DERAY *v.* LARSON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 153 Fed. Appx. 19.

No. 06–7637. MARTINEZ, AKA GARCIA *v.* VAZQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–7638. BASS *v.* WILLIAMS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7640. BARNES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–7641. WALKER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–7643. GRUNE *v.* CONNOLLY, SUPERINTENDENT, FISHKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–7648. SONDS *v.* HUFF ET AL. C. A. D. C. Cir. Certiorari denied.

No. 06–7650. MARQUEZ *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 06–7653. SEABERRY *v.* LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–7655. GASTON *v.* PALMER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 447 F. 3d 1165.

No. 06–7656. BLOM *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 06–7658. CAREY *v.* MILWAUKEE TEACHERS EDUCATION ASSN. ET AL. C. A. 7th Cir. Certiorari denied.

No. 06–7660. FULLER *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7661. MENDEZ *v.* FARMER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 231.

No. 06–7662. MIDDLETON *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 455 F. 3d 838.

No. 06–7663. WADKINS *v.* ESTEP, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 502.

No. 06–7665. SPIRTOS *v.* ALLSTATE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 538.

No. 06–7666. YONAI *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–7668. BLANKENSHIP *v.* MITCHELL, SUPERINTENDENT, CRAGGY CORRECTIONAL CENTER. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 225.

No. 06–7669. BUTLER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 378.

No. 06–7670. BRANHAM *v.* CARUSO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7671. WOLFSON *v.* FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 866.

No. 06–7674. LEWIS *v.* MILLER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 06–7675. LAWRENCE *v.* MOORE, SUPERINTENDENT, NORTHEAST CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–7677. COTTON *v.* ROTHGERY, JUDGE, COURT OF COMMON PLEAS OF OHIO, LORAIN COUNTY. Sup. Ct. Ohio. Certiorari denied.

No. 06–7687. TAYLOR *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7688. PELHAM *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 06–7690. BLACKWELL *v.* MITCHELL, CORRECTIONAL ADMINISTRATOR IV, MOUNTAIN VIEW CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 134.

No. 06–7693. WISE *v.* MILLER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 186 Fed. Appx. 326.

No. 06–7694. DEAN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–7695. DEAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–7715. CLAUSEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–7719. MCMANUS *v.* RIDGLEY ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–7721. MARTIN *v.* KEITEL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 205 Fed. Appx. 925.

No. 06–7723. CARR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 907.

No. 06–7726. COLEMAN *v.* UNITED STATES; and
No. 06–7727. WORTHY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7730. MICHANOWICZ *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 935 So. 2d 556.

No. 06–7732. VICTORIAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–7737. SEPULVEDA-IRIBE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 592.

No. 06–7741. MCLAURIN *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied. Reported below: 199 Fed. Appx. 193.

No. 06–7742. MCCULLOUGH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 457 F. 3d 1150.

No. 06–7744. RIVERA *v.* VAN BUREN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–7745. RIVERA-TORRES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–7750. MASSEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 461 F. 3d 177.

No. 06–7757. ALLEN *v.* GENERAL MOTORS CORP. C. A. 11th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 869.

No. 06–7760. NEAL *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–7764. D'ARY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 454 F. 3d 887.

No. 06–7767. ROCHE *v.* O'BRIEN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 251.

No. 06–7768. MEJIA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 448 F. 3d 436.

No. 06–7770. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 208.

No. 06–7772. VILLAREAL-AMARILLAS ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 454 F. 3d 925.

No. 06–7776. ADAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 189 Fed. Appx. 120.

No. 06–7777. BARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 148.

No. 06–7778. AWALA *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Certiorari denied.

No. 06–7780. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 459 F. 3d 1276.

No. 06–7781. SCHATZKE *v.* HUMPHREYS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–7783. JAMISON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7785. ESTRADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 453 F. 3d 1208.

No. 06–7786. COLEMAN, AKA LONG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 451 F. 3d 154.

No. 06–7787. DUNBAR *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7788. CASTILLO JACOBO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 648.

No. 06–7789. SUTHERLAND *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 737.

No. 06–7790. BORKOWSKI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 528.

No. 06–7791. CLARK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 491.

No. 06–7797. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 319.

No. 06–7798. DEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7799. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7800. HENDERSON *v.* COLLINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 518.

No. 06–7802. DUNIGAN *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 210.

No. 06–7803. PERALTA-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 3d 596.

No. 06–7804. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 792.

No. 06–7807. JACQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 583.

No. 06–7808. LANZA-GUILLEN, AKA LANZA *v.* UNITED STATES (Reported below: 195 Fed. Appx. 225); LOPEZ-CHAVEZ, AKA CHAVEZ *v.* UNITED STATES (195 Fed. Appx. 251); SANCHEZ-AGUILERA, AKA ROBLES *v.* UNITED STATES (196 Fed. Appx. 282); BARBOSA-CANTU *v.* UNITED STATES (195 Fed. Appx. 269); HIDALGO-DE LEON, AKA DELEON HIDALGO *v.* UNITED STATES (197 Fed. Appx. 375); MUNGIA *v.* UNITED STATES (198 Fed. Appx. 395); LARA-MACHUCA *v.* UNITED STATES (198 Fed. Appx. 393); DIAZ *v.* UNITED STATES (197 Fed. Appx. 376); ESPINOZA-LEON *v.* UNITED STATES (198 Fed. Appx. 394); BONILLA-MUNGIA *v.* UNITED STATES (200 Fed. Appx. 376); SILVA-SIERRA *v.* UNITED STATES (202 Fed. Appx. 11); ANDRADE-DE LA ROSA *v.* UNITED STATES (202 Fed. Appx. 53); SANCHEZ-ESPINOZA *v.* UNITED STATES (202 Fed. Appx. 7); CENTENO-GUERRERO *v.* UNITED STATES (202 Fed. Appx. 22); MARTINEZ-RODRIGUEZ *v.* UNITED STATES (201 Fed.

Appx. 965); GARCIA-GAMEZ *v.* UNITED STATES (201 Fed. Appx. 288); HERNANDEZ-GAMBOA, AKA CARDENAS-GARCIA *v.* UNITED STATES (202 Fed. Appx. 18); CASTRO-GUERRERO *v.* UNITED STATES (202 Fed. Appx. 10); SOPONY-VALENZUELA, AKA CARDONA-RODRIGUES *v.* UNITED STATES (202 Fed. Appx. 829); ASCENCIO-CONTRERAS, AKA ACENCIO *v.* UNITED STATES (203 Fed. Appx. 627); and FUENTE-AGUILERA *v.* UNITED STATES (203 Fed. Appx. 671). C. A. 5th Cir. Certiorari denied.

No. 06–7809. MIXON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 457 F. 3d 615.

No. 06–7810. POWELL *v.* IDAHO. Ct. App. Idaho. Certiorari denied.

No. 06–7811. HOGAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 139 P. 3d 907.

No. 06–7812. WEBSTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 946.

No. 06–7813. YOUNG *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 294 Wis. 2d 1, 717 N. W. 2d 729.

No. 06–7815. VAN BUREN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 257.

No. 06–7816. WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 449 F. 3d 904.

No. 06–7819. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7821. DAVIS *v.* HONDA OF SOUTH CAROLINA MANUFACTURING, INC. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 268.

No. 06–7823. HANKTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 463 F. 3d 626.

No. 06–7824. INGRAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–7825. GUIDRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 3d 493.

No. 06–7826. GALVAN-VELEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–7828. GONZALEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 38 Cal. 4th 932, 135 P. 3d 649.

No. 06–7829. HERNANDEZ *v.* UNITED STATES;
No. 06–7874. MORALES *v.* UNITED STATES; and
No. 06–7887. GUERRA-MORALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 449 F. 3d 1168.

No. 06–7830. GRAVENHORST *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 190 Fed. Appx. 1.

No. 06–7833. SHURN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 598.

No. 06–7835. RENNERT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 182 Fed. Appx. 65.

No. 06–7837. RAMIREZ-KROTKY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 746.

No. 06–7838. HAIR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 879.

No. 06–7839. HUGHLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 447.

No. 06–7840. GUEL-SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 388.

No. 06–7841. HAMILTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 167.

No. 06–7842. HANTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 247.

No. 06–7843. CARDONA *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 327.

No. 06–7845. DALEY *v.* FEDERAL BUREAU OF PRISONS. C. A. 3d Cir. Certiorari denied. Reported below: 192 Fed. Appx. 106.

No. 06–7847. MATEO DE PENA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 184 Fed. Appx. 119.

No. 06–7848. HULL *v.* NEW MEXICO TAXATION AND REVENUE DEPARTMENT'S MOTOR VEHICLE DIVISION. C. A. 10th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 445.

No. 06–7849. KNUTSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–7850. LYNCH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 718.

No. 06–7851. SANDERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 207.

No. 06–7852. SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 645.

No. 06–7853. RODRIGUEZ ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 187 Fed. Appx. 30.

No. 06–7854. SYKOSKY *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 953.

No. 06–7855. TOLENTO-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 679.

No. 06–7856. TEJEDA-ORTIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–7857. VIVAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 670.

No. 06–7859. WELLS *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 425.

No. 06–7860. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 940.

No. 06–7864. BARFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–7865. BRUCE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 458 F. 3d 1157.

No. 06–7866. BOMER *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied.

No. 06–7867. CONCE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–7869. MCCHESNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 724.

No. 06–7872. QUIROS-MORALES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–7875. OROZCO-QUIROZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 686.

No. 06–7878. MANN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 430.

No. 06–7881. PLACENCIA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–7882. ARELLANO-PERALTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 658.

No. 06–7883. ALMADER-SALAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 597.

No. 06–7884. TILMON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–7890. SANDOVAL-ALVAREZ *v.* UNITED STATES (Reported below: 196 Fed. Appx. 297); KUBIK *v.* UNITED STATES (202 Fed. Appx. 18); WILLETT *v.* UNITED STATES (202 Fed. Appx. 55); GALLEGOS *v.* UNITED STATES (198 Fed. Appx. 389); LUERA *v.* UNITED STATES (202 Fed. Appx. 31); SMITH *v.* UNITED STATES (202 Fed. Appx. 15); FLORES-ALVARADO *v.* UNITED STATES (203 Fed. Appx. 639); ROMERO *v.* UNITED STATES (198 Fed. Appx. 390); SAMUDIO-DE ALONSO *v.* UNITED STATES (203 Fed. Appx. 642); ACOSTA-TORRES *v.* UNITED STATES (202 Fed. Appx. 20); CASTILLO *v.* UNITED STATES (199 Fed. Appx. 356); RAMIREZ *v.* UNITED STATES (201 Fed. Appx. 297); and SANTOS-GARZA *v.* UNITED STATES (202 Fed. Appx. 9). C. A. 5th Cir. Certiorari denied.

No. 06–7891. MURPHY *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 06–7892. SAKE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 401.

No. 06–7894. CLARIETT *v.* DOMINGUEZ ET AL. C. A. D. C. Cir. Certiorari denied.

No. 06–7902. MCKNIGHT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 538.

No. 06–7903. MORALES-CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 680.

No. 06–7905. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–7908. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 866.

No. 06–7916. BRADSHAW *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–7917. ABEYTA *v.* ESTEP, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 724.

No. 06–7919. ALEXANDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 450 F. 3d 366.

No. 06–7920. AL-DABBI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 517.

No. 06–7921. ARROYO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–7923. SADLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 738.

No. 06–7924. SHANKLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 384.

No. 06–7925. RODRIGUEZ-ORTIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 455 F. 3d 18.

No. 06–7928. WEST *v.* SCHNEITER, WARDEN. Ct. App. Wis. Certiorari denied.

No. 06–7930. SANDERS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 167 Fed. Appx. 179.

No. 06–7933. JUSTICE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–7936. BLOUNT ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 145.

No. 06–7939. BOLDEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 541.

No. 06–7940. BROOKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–7941. BAXTER *v.* WASHINGTON. C. A. 11th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 656.

No. 06–7943. LYNCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 237.

No. 06–7947. HUNT *v.* PAUL ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–7951. HARRIS *v.* ORTIZ, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–7953. MIRANDA *v.* VAN BUREN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 305.

No. 06–7955. GLOVER *v.* BIRKOWITZ ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–7957. FIELDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 825.

No. 06–7960. GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 414.

No. 06–7961. TYNDALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–7963. DECOTEAU *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 575.

No. 06–7965. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 451 F. 3d 543.

No. 06–7966. UNDERWOOD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 215.

No. 06–7968. WYLLIE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–7970. VALDEZ-SERRATO, AKA SERRATO VALDEZ *v.* UNITED STATES (Reported below: 195 Fed. Appx. 239); ARGUETA-FERNANDEZ *v.* UNITED STATES (195 Fed. Appx. 237); GUTIERREZ-GARCIA *v.* UNITED STATES (195 Fed. Appx. 270); CANALES-MATUTE *v.* UNITED STATES (195 Fed. Appx. 284); TOVAR-ESPINOSA *v.* UNITED STATES (195 Fed. Appx. 286); DE LEON-GONZALEZ *v.* UNITED STATES (196 Fed. Appx. 283); CARDOZA-RODRIGUEZ *v.* UNITED STATES (195 Fed. Appx. 268); GONZALEZ *v.* UNITED STATES (198 Fed. Appx. 395); SERPAS-AMAYA *v.* UNITED STATES (197 Fed. Appx. 375); SOLORIO-RIVERA *v.* UNITED STATES (198 Fed. Appx. 396); MEDINA-COVOS *v.* UNITED STATES (200 Fed. Appx. 362); LUNA-QUEZADAS, AKA QUEZADAS LUNA *v.* UNITED STATES (202 Fed. Appx. 7); GAMEZ-BONILLA *v.* UNITED STATES (202 Fed. Appx. 16); FAZ-GONZALEZ *v.* UNITED STATES (201 Fed. Appx. 966); and NAVARRETE-ORTIZ, AKA JUAREZ-ROBLES *v.* UNITED STATES (202 Fed. Appx. 29). C. A. 5th Cir. Certiorari denied.

No. 06–7971. ZUNIGA-GUERRERO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 460 F. 3d 733.

No. 06–7972. WHERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–7976. PRESLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 184 Fed. Appx. 280.

No. 06–7978. SALAS-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 34.

No. 06–7980. SPUZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 671.

No. 06–7982. WAGNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 463.

No. 06–7983. WOMACK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 231.

No. 06–7986. ABDULLAH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 150.

No. 06–7987. ABRAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 718.

No. 06–7988. WILSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 753.

No. 06–7989. AMAYA-MELGOZA *v.* UNITED STATES (Reported below: 203 Fed. Appx. 665); AREA-RUIZ, aka AREI *v.* UNITED STATES (194 Fed. Appx. 250); CAPETILLO-RIVERA *v.* UNITED STATES (203 Fed. Appx. 644); CAVAZOS-SOTO *v.* UNITED STATES (203 Fed. Appx. 652); ESTRELLA-CAMBRANIS *v.* UNITED STATES (203 Fed. Appx. 643); GARCIA-ROMERO, aka MAJUUF *v.* UNITED STATES (199 Fed. Appx. 358); GARCIA-SANCHEZ *v.* UNITED STATES (203 Fed. Appx. 639); GOMEZ-PEREZ *v.* UNITED STATES (203 Fed. Appx. 656); HERNANDEZ-ROMERO *v.* UNITED STATES (195 Fed. Appx. 283); HERNANDEZ-URIBE *v.* UNITED STATES (203 Fed. Appx. 662); JIMENEZ-MARTINEZ, aka PINEDA-CASTREGON *v.* UNITED STATES (202 Fed. Appx. 26); MARTINEZ-FAJARDO *v.* UNITED STATES (199 Fed. Appx. 359); ONTIVEROS-MENDOZA *v.* UNITED STATES (203 Fed. Appx. 641); PORTILLO-VELA *v.* UNITED STATES (199 Fed. Appx. 354); RAMIREZ-JIMENEZ *v.* UNITED STATES (202 Fed. Appx. 9); RAMOS-CERDA *v.* UNITED STATES (199 Fed. Appx. 371); SANTELLANO *v.* UNITED STATES (195 Fed. Appx. 266); VARGAS-SANCHEZ, aka VARGAS-CORRAL *v.* UNITED STATES (202 Fed. Appx. 12); VELASQUEZ-CRUZ, aka VELASQUEZ, aka VASQUEZ *v.* UNITED STATES (195 Fed. Appx. 240); and ZARATE-RIZO *v.* UNITED STATES (201 Fed. Appx. 289). C. A. 5th Cir. Certiorari denied.

No. 06–7991. VIDRIO-OSUNA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 582.

No. 06–7992. WATTS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 06–7994. LOSSIA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 432.

No. 06–7998. PRINCE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 798.

No. 06–8001. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 837.

No. 06–8003. LIGHTNER *v.* ESTEP, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 680.

No. 06–8006. PRICE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 3d 202.

No. 06–8009. MCLEAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 466.

No. 06–8010. TAKAKI *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 186 Fed. Appx. 1012.

No. 06–8014. ROSS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–8018. OCHOA SUAREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–8020. BEVERLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 624.

No. 06–8024. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 716.

No. 06–8025. COLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 539.

No. 06–8026. DOMINGUEZ-REYNOSA *v.* UNITED STATES (Reported below: 196 Fed. Appx. 291); and TIBURCIO-AVILA *v.* UNITED STATES (204 Fed. Appx. 353). C. A. 5th Cir. Certiorari denied.

No. 06–8029. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 360.

No. 06–8030. FRYE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 948.

No. 06–8033. NAI CHING SAELEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 673.

No. 06–8036. BERGMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 06–8037. BLOUNT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 690.

No. 06–8038. ALANIS *v.* MORRIS, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 282.

No. 06–8043. STEELE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8044. ROSE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 197.

No. 06–8048. MCDONALD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 199.

No. 06–8051. VERA *v.* POTTER, POSTMASTER GENERAL. C. A. 2d Cir. Certiorari denied.

No. 06–8053. VIEUX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8054. SALAZAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 787.

No. 06–8055. KEYS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 667.

No. 06–8059. GARCIA-BOLANOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 626.

No. 06–8064. HARDNETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 205.

No. 06–8065. FLOWERS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 887 A. 2d 1028.

No. 06–8068. CHAMBLISS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 782.

No. 06–8069. COMBS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 319.

No. 06–8070. TAYLOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 793.

No. 06–8074. DOWDY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–8075. CALLAWAY, AKA CALLOWAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8076. CASTANEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–8077. ESCOBAR DE JESUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–8078. CURTIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8079. DUNKLIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 454 F. 3d 660.

No. 06–8090. HARRIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 190 Fed. Appx. 110.

No. 06–8093. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–8095. HODGES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 959.

No. 06–8096. GRIFFITH *v.* UNITED STATES; and
No. 06–8098. GRIFFITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–8097. FONSECA *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 182 Fed. Appx. 100.

No. 06–8102. LEIKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 741.

No. 06–8105. COCCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 446 F. 3d 233.

No. 06–8106. VILLAGRANA-FLORES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 467 F. 3d 1269.

No. 06–8109. WENCES-BRAVO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 283.

No. 06–8113. BENITEZ-MEDINA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–8114. ARNETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 686.

No. 06–8118. BRYANT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 186 Fed. Appx. 298.

No. 06–8119. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 292.

No. 06–8122. GAINES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 707.

No. 06–8123. HUMBARGER *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 520.

No. 06–8124. LOPEZ RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 538.

No. 06–8125. SNOW *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 462 F. 3d 53.

No. 06–8127. CASON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–8129. HENDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 265.

No. 06–8136. GARTRELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 378.

No. 06–8143. EVANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 194.

No. 06–8146. DIAZ-CORTEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 621.

No. 06–8147. HANSEN *v.* RIOS, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–8148. PICKARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 441 F. 3d 1162.

No. 06–8149. PACKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 685.

No. 06–8150. PENALVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 945.

No. 06–8152. JYNES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 351.

No. 06–8157. ROMM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 455 F. 3d 990.

No. 06–8160. SARDANA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–8161. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 608.

No. 06–8164. DUNCAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–8165. CANN *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–8166. DUBOSE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 821.

No. 06–8172. WALTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 482.

No. 06–8175. MUSTAPHA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 431.

No. 06–8176. BELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 197 Fed. Appx. 11.

No. 06–8182. SPRADLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8186. PEREZ-LUNA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–8188. LARRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–8190. DUPRE *v.* UNITED STATES; and
No. 06–8220. STAMBAUGH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 462 F. 3d 131.

No. 06–8191. CRUZ-MENDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 467 F. 3d 1260.

No. 06–8192. CREECH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–8193. BETHEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 3d 711.

No. 06–8195. RAMSEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–8199. GONZALES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 446 F. 3d 762.

No. 06–8200. CARRION-CRUZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–8201. TINDALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 455 F. 3d 885.

No. 06–8202. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 782.

No. 06–8204. TERRELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 715.

No. 06–8206. THIGPEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 456 F. 3d 766.

No. 06–8207. WRIGHT *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 451 F. 3d 1231.

No. 06–8209. MASON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 425.

No. 06–8212. CANALES-MOTINO, AKA MOTINO-RODRIGUEZ *v.* UNITED STATES (Reported below: 198 Fed. Appx. 387); CANDELARIO-CAJERO *v.* UNITED STATES (199 Fed. Appx. 384); GUEL-ZAMBRANO *v.* UNITED STATES (199 Fed. Appx. 366); LOPEZ-SALAZAR, AKA ESPARZA PEREZ, AKA SALAZAR PEREZ *v.* UNITED STATES (200 Fed. Appx. 282); and LOZA-HERNANDEZ *v.* UNITED STATES (200 Fed. Appx. 279). C. A. 5th Cir. Certiorari denied.

No. 06–8213. ESCOBEDO-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 405.

No. 06–8214. CRUZ-BARDALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 356.

No. 06–8215. CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–8216. ESPARZA-MURILLO, AKA ESPARAZA MURILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 409.

No. 06–8217. DEVEAUX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 480.

No. 06–8218. AMADOR-DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 398.

No. 06–8219. BRISCOE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 290.

No. 06–8221. BEAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–8222. LENOVER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 563.

No. 06–8225. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 318.

No. 06–8228. REYNA-JIMENEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 232.

No. 06–8231. MCCARTHY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–8232. HANSEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 355.

No. 06–8234. GARCIA-LUCAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 249.

No. 06–8237. ROBINSON *v.* REVELL, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–8238. RIVAS-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 362.

No. 06–8242. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–8244. LANE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8245. MARTE-FUERTE *v.* UNITED STATES (Reported below: 199 Fed. Appx. 370); PENA-ALVAREZ *v.* UNITED STATES (198 Fed. Appx. 394); GRILLI-BRUZZONI, AKA RODRIGUEZ *v.* UNITED STATES (198 Fed. Appx. 397); GOMEZ-AGUILERA *v.* UNITED STATES (202 Fed. Appx. 23); CRUZ-ROMERO, AKA

ROMERO-CRUZ *v.* UNITED STATES (202 Fed. Appx. 22); AYALA-AYALA *v.* UNITED STATES (202 Fed. Appx. 6); ALVARADO-RODRIGUEZ *v.* UNITED STATES (202 Fed. Appx. 24); SERRANO-VILLA *v.* UNITED STATES (202 Fed. Appx. 50); MERAZ-LARES *v.* UNITED STATES (204 Fed. Appx. 352); HERNANDEZ-BELTRAN *v.* UNITED STATES (203 Fed. Appx. 594); GARCIA-GARZA *v.* UNITED STATES (203 Fed. Appx. 666); PADILLA-PECINA *v.* UNITED STATES (203 Fed. Appx. 638); CHAVEZ-TOVAR *v.* UNITED STATES (203 Fed. Appx. 640); VILLARREAL-GARCIA *v.* UNITED STATES (199 Fed. Appx. 390); LUNA-CHAVEZ *v.* UNITED STATES; TORRES-LUNA *v.* UNITED STATES (202 Fed. Appx. 841); DUNEZ-DE GRANDE *v.* UNITED STATES (203 Fed. Appx. 663); AGUILAR-HUESO *v.* UNITED STATES (202 Fed. Appx. 5); and SANTIAGO-SIFUENTES *v.* UNITED STATES (198 Fed. Appx. 406). C. A. 5th Cir. Certiorari denied.

No. 06–8246. KEEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 218.

No. 06–8247. RECILLAS-GOROSTIETA, AKA MARTINEZ, AKA GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 409.

No. 06–8250. JIMENEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 387.

No. 06–8253. PULIDO-RAMOS *v.* UNITED STATES (Reported below: 199 Fed. Appx. 369); RENTERIA-CARRILLO *v.* UNITED STATES (198 Fed. Appx. 401); RIVERA-RAMIREZ, AKA RIVERA *v.* UNITED STATES (199 Fed. Appx. 380); SALDANA-CONTRERAS *v.* UNITED STATES (198 Fed. Appx. 384); SALGADO-RAMOS, AKA VASQUEZ *v.* UNITED STATES (199 Fed. Appx. 365); VALDEZ-ARTEAGA *v.* UNITED STATES (198 Fed. Appx. 400); and WENCE-GALLEGOS *v.* UNITED STATES (200 Fed. Appx. 281). C. A. 5th Cir. Certiorari denied.

No. 06–8254. PADILLA-TORRES, AKA PADILLA-MARTINEZ *v.* UNITED STATES (Reported below: 199 Fed. Appx. 382); RODELO-VASQUEZ *v.* UNITED STATES (199 Fed. Appx. 381); RUBIO-MATA *v.* UNITED STATES (199 Fed. Appx. 389); SANDOVAL-REYES *v.* UNITED STATES (199 Fed. Appx. 366); VALENZUELA-GOMEZ *v.* UNITED STATES (199 Fed. Appx. 361); and VIGIL-PERALES, AKA LOPEZ, AKA PERALES, AKA RUIZ ARREDONDO, AKA MESA GARZA, AKA ESCALANTE OBREGON, AKA OBREGON, AKA PERALES VIGIL

v. UNITED STATES (199 Fed. Appx. 387). C. A. 5th Cir. Certiorari denied.

No. 06–8256. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 227.

No. 06–8257. BARNHART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 317.

No. 06–8259. ALANIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8260. ALVAREZ-MORALES *v.* UNITED STATES (Reported below: 199 Fed. Appx. 386); AMAYA-GARCIA *v.* UNITED STATES (199 Fed. Appx. 387); ANTILLON-GARCIA *v.* UNITED STATES (198 Fed. Appx. 392); BIBIANO-PENA *v.* UNITED STATES (198 Fed. Appx. 386); DE LA ROSA, AKA CONTRERAS *v.* UNITED STATES (198 Fed. Appx. 402); ENRIQUEZ, AKA ENRIQUES *v.* UNITED STATES (199 Fed. Appx. 390); GALVAN-BUSTILLOS, AKA ORDORICO-VASQUEZ *v.* UNITED STATES (200 Fed. Appx. 279); GARCIA-SARABIA *v.* UNITED STATES (198 Fed. Appx. 405); GOMEZ-GARCIA *v.* UNITED STATES (198 Fed. Appx. 403); GONZALEZ-ANTUNA *v.* UNITED STATES (198 Fed. Appx. 386); HERNANDEZ-HERNANDEZ *v.* UNITED STATES (198 Fed. Appx. 404); HERNANDEZ-RENTERIA, AKA NEGRETE-LOPEZ *v.* UNITED STATES (200 Fed. Appx. 281); IBARRA-HERNANDEZ, AKA IBARRA *v.* UNITED STATES (199 Fed. Appx. 367); NIETO-PEREZ, AKA NATERA PEREZ *v.* UNITED STATES (199 Fed. Appx. 365); PEREZ-BENITEZ *v.* UNITED STATES (199 Fed. Appx. 388); PEREZ-GUZMAN, AKA PEREZ-MARTINEZ *v.* UNITED STATES (199 Fed. Appx. 369); and PEREZ-HERRERA *v.* UNITED STATES (199 Fed. Appx. 383). C. A. 5th Cir. Certiorari denied.

No. 06–8261. LOUIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8267. PLANCARTE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–8268. TYREE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 186 Fed. Appx. 4.

No. 06–8277. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 494.

No. 06–8278. MOJA-PLASTICON, AKA GUZMAN, AKA HOLL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 789.

No. 06–8280. MCGEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 3d 667.

No. 06–8284. LOWERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 158.

No. 06–8285. VEGA-FIGUEROA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–173. SAN CARLOS APACHE TRIBE *v.* ARIZONA ET AL.; and

No. 06–333. PHELPS DODGE CORP. *v.* SAN CARLOS APACHE TRIBE ET AL. Sup. Ct. Ariz. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 212 Ariz. 64, 127 P. 3d 882.

No. 06–443. BRUCKELMYER *v.* T. H. E. MACHINE CO. C. A. Fed. Cir. Motion of Ground Heaters, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 445 F. 3d 1374.

No. 06–475. BLUE CROSS BLUE SHIELD OF FLORIDA, INC., ET AL. *v.* ABBOTT LABORATORIES ET AL. C. A. 11th Cir. Motions of BlueCross BlueShield of Massachusetts et al. and Law Professors Myriam Gilles and Guy Charles for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 179 Fed. Appx. 600.

No. 06–513. HOUK, WARDEN *v.* FRANKLIN. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 434 F. 3d 412.

No. 06–524. SWAN *v.* WAL-MART STORES, INC., ET AL. Commw. Ct. Pa. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 06–567. JUNG ET AL. *v.* ASSOCIATION OF AMERICAN MEDICAL COLLEGES ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 184 Fed. Appx. 9.

No. 06–6984. BROWN *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 179 Fed. Appx. 845.

No. 06–7259. TSEHAI *v.* LONG, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 06–7265. DOURIS *v.* OFFICE OF THE ATTORNEY GENERAL OF PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 174 Fed. Appx. 691.

No. 06–7294. LYNCH *v.* CITIFINANCIAL. Ct. App. Ohio, Lorain County. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 06–7333. SUMMERS *v.* RICCI, ASSOCIATE ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 06–7349. SHELLEY *v.* MAPES, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 06–7403. BOX *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 06–7553. SAVAGE *v.* BONAVITACOLA ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 180 Fed. Appx. 384.

No. 06–7582. SAYLOR *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 06–7685. TAYLOR *v.* WAL-MART STORES, INC. Sup. Ct. La. Certiorari denied. JUSTICE BREYER took no part in the

consideration or decision of this petition. Reported below: 926 So. 2d 500.

No. 06–7805. SPARKS *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari before judgment denied.

No. 06–8091. HALE *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 448 F. 3d 971.

No. 06–8262. VALENCIA RIOS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 06–8661 (06A666). HAMILTON *v.* JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE SOUTER would grant the application for stay of execution. Reported below: 472 F. 3d 814.

Rehearing Denied

No. 04–10562. CALCARI *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL., 546 U. S. 858;

No. 05–493. AYERS, WARDEN *v.* BELMONTES, *ante*, p. 7;

No. 05–1373. DABISH *v.* DAIMLERCHRYSLER CORP. ET AL., *ante*, p. 812;

No. 05–1612. RUDD *v.* SHELBY COUNTY, TENNESSEE, *ante*, p. 823;

No. 05–8956. TEMPLE *v.* UNITED STATES, *ante*, p. 1018;

No. 05–9463. SIMS *v.* CEDAR PARK ELEMENTARY, 547 U. S. 1115;

No. 05–9853. WHITE *v.* UNITED STATES, *ante*, p. 1018;

No. 05–10634. GUZMAN-BALBUENA *v.* UNITED STATES, *ante*, p. 1019;

No. 05–10729. WILLIAMS *v.* HINSLEY ET AL., *ante*, p. 831;

No. 05–10869. CHAMPION *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 834;

No. 05–11015. THOMPSON *v.* HAMRICK ET AL., *ante*, p. 839;

No. 05–11075. GRIFFIN *v.* SUTHERS ET AL., *ante*, p. 840;

No. 05–11086. VAHIDALLAH *v.* PROFESSIONAL EXAMINATION SERVICE ET AL., *ante*, p. 841;

No. 05–11132. BIROTTE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 842;

No. 05–11397. NEUHAUSSER *v.* UNITED STATES, *ante*, p. 945;

No. 05–11513. NESBITT *v.* UNITED STATES, *ante*, p. 861;

No. 05–11516. BERGMAN *v.* LACOUTURE, *ante*, p. 861;

No. 05–11542. SAUNDERS *v.* EDWARDS, SUPERINTENDENT, OTISVILLE CORRECTIONAL FACILITY, ET AL., *ante*, p. 862;

No. 05–11548. BELL *v.* UNITED STATES, *ante*, p. 863;

No. 05–11701. PICKARD *v.* THOMPSON, WARDEN, *ante*, p. 872;

No. 05–11703. MCCALISTER *v.* UNITED STATES, *ante*, p. 872;

No. 05–11795. GREEN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL., *ante*, p. 877;

No. 06–64. RAMSEY *v.* IRVINE ET AL., *ante*, p. 884;

No. 06–233. GIBSON *v.* ADA COUNTY, IDAHO, ET AL., *ante*, p. 994;

No. 06–284. KEYTER *v.* LOCKE, GOVERNOR OF WASHINGTON, ET AL., *ante*, p. 995;

No. 06–382. BUNDY ET AL. *v.* BOARD ET AL., *ante*, p. 1052;

No. 06–431. WIDTFELDT *v.* COUNCIL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, *ante*, p. 1020;

No. 06–461. SALADINO *v.* UNITED STATES, *ante*, p. 997;

No. 06–507. WILLIAMS *v.* WALDREP ET AL., *ante*, p. 1032;

No. 06–5069. CRAWFORD *v.* WAYNE COUNTY COMMUNITY COLLEGE DISTRICT, *ante*, p. 894;

No. 06–5090. RIVERA-DIAZ ET AL. *v.* AMERICAN AIRLINES, INC., ET AL., *ante*, p. 956;

No. 06–5124. JAMES *v.* YORK COUNTY POLICE DEPARTMENT ET AL., *ante*, p. 897;

No. 06–5178. LUGO *v.* RUNNELS, WARDEN, *ante*, p. 900;

No. 06–5192. CARRILLO *v.* UNITED STATES, *ante*, p. 901;

No. 06–5236. PARRISH *v.* WHORTON, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 904;

No. 06–5406. FOHNE *v.* JOHANNS, SECRETARY OF AGRICULTURE, *ante*, p. 913;

No. 06–5413. PALACIOS-MUNGIA *v.* UNITED STATES, *ante*, p. 1055;

No. 06–5455. MIGLIORE *v.* BOARD OF REVIEW, NEW JERSEY DEPARTMENT OF LABOR, *ante*, p. 915;

No. 06–5523. RAMIREZ *v.* SANTA FE COUNTY ADULT DETENTION CENTER, *ante*, p. 919;

No. 06–5543. HUMPHREY *v.* UNITED STATES, *ante*, p. 1033;

No. 06–5572. BOZEMAN *v.* JAFFEY, *ante*, p. 922;

No. 06–5600. ROUX *v.* SOUTHWESTERN BELL YELLOW PAGES, INC., SBC, *ante*, p. 957;

No. 06–5616. EL-GHAZALI, AKA GHAZALI, AKA RAHMAN, AKA ABD-EL-RAHMAN *v.* UNITED STATES, *ante*, p. 1055;

No. 06–5620. THATCHER *v.* ROMANOWSKI, WARDEN, *ante*, p. 957;

No. 06–5700. ROWSEY *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 959;

No. 06–5823. IN RE GREEN, *ante*, p. 951;

No. 06–5854. WILLIAMS-BEY *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON, *ante*, p. 977;

No. 06–6059. HENDRICKSON *v.* DEPARTMENT OF VETERANS AFFAIRS, *ante*, p. 979;

No. 06–6074. CHRISTIAN *v.* CITY OF SEBRING, OHIO, ET AL., *ante*, p. 998;

No. 06–6111. COOPER *v.* UNITED STATES, *ante*, p. 1056;

No. 06–6120. BROOKS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, *ante*, p. 999;

No. 06–6134. IN RE MOSSERI, *ante*, p. 992;

No. 06–6137. CATUARA *v.* WASHINGTON MUTUAL BANK, F. A., *ante*, p. 999;

No. 06–6138. BROWNLEE *v.* CURRY, WARDEN, *ante*, p. 999;

No. 06–6190. MUHAMMAD *v.* UNITED STATES, *ante*, p. 965;

No. 06–6225. BURL *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS, ET AL., *ante*, p. 1001;

No. 06–6228. PATTON, AKA PATTEN *v.* UNITED STATES, *ante*, p. 966;

No. 06–6232. MAIA PIRES *v.* GONZALES, ATTORNEY GENERAL, *ante*, p. 1002;

No. 06–6276. MOORE *v.* SIMPSON, WARDEN, *ante*, p. 1027;

No. 06–6310. JACKSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, *ante*, p. 1002;

No. 06–6372. BOETTNER *v.* TEXAS, *ante*, p. 1035;

No. 06–6384. AGUIRRE-GANCEDA *v.* UNITED STATES, *ante*, p. 981;

No. 06–6476. BOYD *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL., *ante*, p. 1036;

No. 06–6494. CENSKE *v.* CALHOUN COUNTY JAIL ET AL., *ante*, p. 1023;

No. 06–6515. WINTERS *v.* EVANS, WARDEN, *ante*, p. 1037;

No. 06–6588. KRIKORIAN *v.* FLORIDA, *ante*, p. 1023;

No. 06–6595. MERCADO *v.* UNITED STATES, *ante*, p. 1005;

No. 06–6622. BURKE *v.* VIRGINIA, *ante*, p. 1023;

No. 06–6626. BROWN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1058;

No. 06–6632. SMITH *v.* RABION, *ante*, p. 1023;

No. 06–6634. SIEROTOWICZ *v.* NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS, *ante*, p. 1023;

No. 06–6643. ANDREWS *v.* UNITED STATES, *ante*, p. 1006;

No. 06–6702. WILSON *v.* POLLARD, WARDEN, *ante*, p. 1024;

No. 06–6711. GENAO *v.* UNITED STATES, *ante*, p. 1015;

No. 06–6715. HUNTER *v.* SOUTH CAROLINA, *ante*, p. 1060;

No. 06–6826. ROSS *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL., *ante*, p. 1062;

No. 06–6828. BURNSED *v.* FLORIDA, *ante*, p. 1024;

No. 06–6834. THOMPSON *v.* UNITED STATES, *ante*, p. 1011;

No. 06–6862. MITCHELL *v.* UNITED STATES, *ante*, p. 1012;

No. 06–6961. DAT HOANG *v.* CENTRAL INTELLIGENCE AGENCY ET AL., *ante*, p. 1063;

No. 06–6973. MATTHEWS *v.* OFFICE OF PERSONNEL MANAGEMENT, *ante*, p. 1039;

No. 06–7084. IN RE ADAMS, *ante*, p. 1018;

No. 06–7096. FEDERMANN *v.* UNITED STATES, *ante*, p. 1040;

No. 06–7445. IN RE SKILLERN, *ante*, p. 1050; and

No. 06–7458. IN RE POWELL, *ante*, p. 1050. Petitions for rehearing denied.

No. 05–11836. GORKO *v.* UNITED STATES, *ante*, p. 946. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 06–253. COLLIER *v.* PRUETT ET AL., *ante*, p. 1015; and

No. 06–6516. HOOKS *v.* BANK OF AMERICA, *ante*, p. 1015. Petitions for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of these petitions.

No. 05–11165. BESS *v.* PRAXAIR, INC., *ante*, p. 843;

No. 06–5993. MICHALSKI *v.* POOLE, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY, *ante*, p. 936; and

No. 06–6524. DUVAL *v.* UNITED STATES, *ante*, p. 986. Motions of petitioners for leave to file petitions for rehearing denied.

JANUARY 10, 2007

Dismissal Under Rule 46

No. 05–1544. OCWEN LOAN SERVICING, LLC, AS SUCCESSOR IN INTEREST TO OCWEN FEDERAL BANK, FSB *v.* WASHINGTON. Sup. Ct. Ala. Certiorari dismissed under this Court's Rule 46. Reported below: 939 So. 2d 6.

JANUARY 12, 2007

Certiorari Granted

No. 05–1284. WATSON ET AL. *v.* PHILIP MORRIS COS., INC., ET AL. C. A. 8th Cir. Certiorari granted. Reported below: 420 F. 3d 852.

No. 06–376. HINCK ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari granted. Reported below: 446 F. 3d 1307.

No. 06–531. STRUHS, SECRETARY, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, ET AL. *v.* WYNER ET AL. C. A. 11th Cir. Certiorari granted. Reported below: 179 Fed. Appx. 566.

No. 06–413. UTTECHT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY *v.* BROWN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 451 F. 3d 946.

JANUARY 16, 2007

Dismissals Under Rule 46

No. 06–32. HERRERA-CEJA *v.* GONZALES, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 172 Fed. Appx. 865.

No. 06–673. ALSAMHOURI *v.* GONZALES, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 458 F. 3d 15.

Certiorari Granted—Vacated and Remanded

No. 05–656. MEDIMMUNE, INC. *v.* CENTOCOR, INC., ET AL. C. A. Fed. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *MedImmune, Inc.* v. *Genentech, Inc.*, *ante*, p. 118. Reported below: 409 F. 3d 1376.

No. 05–1472. MILLER, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY *v.* RODRIGUEZ. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Carey* v. *Musladin*, *ante*, p. 70. Reported below: 439 F. 3d 68.

No. 05–1527. SCHMIDT, SHERIFF, SHAWANO COUNTY, WISCONSIN *v.* VAN PATTEN. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Carey* v. *Musladin*, *ante*, p. 70. Reported below: 434 F. 3d 1038.

No. 06–263. HAAS ET AL. *v.* QUEST RECOVERY SERVICES, INC., ET AL. C. A. 6th Cir. Motion of the United States for leave to intervene granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of 28 U. S. C. § 2403(a) to consider the views of the United States. Reported below: 174 Fed. Appx. 265.

JUSTICE GINSBURG, concurring.

I concur in the Court's order granting the petition for certiorari, vacating the Court of Appeals' judgment, and remanding for consideration of the United States' views in light of 28 U. S. C. § 2403(a). The United States points out that had the Sixth Circuit attended to *United States* v. *Georgia*, 546 U. S. 151 (2006), it might not have reached the question whether Title II of the Americans with Disabilities Act of 1990, 104 Stat. 337, as amended, 42 U. S. C. § 12131 *et seq.*, abrogated the State of Ohio's Eleventh Amendment immunity with respect to petitioners' claims. That is so because the Court of Appeals also held that petitioners failed to state a claim for relief against Ohio under Title II. I write separately to note that two aspects of the Sixth Circuit's alternative rulings are puzzling, calling into question the adequacy of those rulings to support the Court of Appeals' judgment.

First, petitioners alleged that Ohio discriminated against Rachel Haas by failing to ensure that she was housed in a handicap

accessible correctional facility. The Court of Appeals held this claim barred by judicial immunity, even though no judge was named a defendant in this action. The court cited no authority for according the benefit of judicial immunity to defendants who are not judges.

Second, petitioners asserted, as a discrete basis for Ohio's liability, the State's ownership of the building housing the private correctional facility to which Haas was assigned. See Dept. of Justice, Civil Rights Division, Disability Rights Section, Americans with Disabilities Act: Title II Technical Assistance Manual § 1.3000 (Nov. 1993) (explaining that a public entity may be liable as a landlord). The Sixth Circuit held that petitioners failed to satisfy special "pleading requirements" set forth in *Johnson* v. *Saline*, 151 F. 3d 564 (1998), for alleging a claim against Ohio as a landlord. Under this Court's jurisprudence, however, federal courts ordinarily have no warrant to impose heightened pleading standards not prescribed by statute or rule. See, *e. g.*, *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163, 168 (1993). Neither *Johnson* nor the decision at hand offers any justification for applying special pleading rules to Title II claims.

If, on remand, the Court of Appeals again holds that petitioners failed to state a claim under Title II, this Court would benefit from a fuller statement of the reasons underlying that decision. Further review here would also be aided if, on remand, the Sixth Circuit clarified whether any aspect of Ohio's Title II liability was covered by the settlement agreement the parties entered into while this case was pending in the District Court. Ohio here contends that, as part of that agreement, it has been released from Title II liability as a landlord. The Sixth Circuit stated only that the parties settled Ohio's liability as a landlord under a different statute, the Rehabilitation Act of 1973, 87 Stat. 355, as amended, 29 U. S. C. § 701 *et seq.*, and petitioners do not concede that they have released their Title II landlord-liability claim.

No. 06–7182. HERRERA MARTINEZ *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Booker*, 543 U. S. 220 (2005). Reported below: 354 F. 3d 932.

Miscellaneous Orders

No. 06A601. MUHAMMAS *v.* MARYLAND ATTORNEY GRIEVANCE COMMISSION. Ct. App. Md. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. 06M57. OBOT ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 06–5247. FRY *v.* PLILER, WARDEN. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1092.] Motion of petitioner for appointment of counsel granted. Victor S. Haltom, Esq., of Sacramento, Cal., is appointed to serve as counsel for petitioner.

No. 06–8500. IN RE BERRYHILL. Petition for writ of habeas corpus denied.

No. 06–701. IN RE BRAY ET AL.; and
No. 06–782. IN RE GIBSON ET AL. Petitions for writs of mandamus denied.

No. 06–7749. IN RE WILLIAMS. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 05–9470. ALLEN *v.* REED, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 427 F. 3d 767.

No. 05–9953. VOGT *v.* NOVAK, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 474.

No. 05–10559. JACKSON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 05–10716. BOYSEN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 05–10998. LIVINGSTON *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 06–274. SOUTH CAROLINA STATE BOARD OF DENTISTRY *v.* FEDERAL TRADE COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 455 F. 3d 436.

No. 06–334. APPOLONI ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 450 F. 3d 185.

No. 06–367. YI FENG ZHENG *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 451 F. 3d 1287.

No. 06–370. DORADO, INDIVIDUALLY AND AS MOTHER AND NEXT FRIEND OF MIRANDA, A MINOR, ET AL. *v.* COUNTY OF EL PASO, TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 180 S. W. 3d 854.

No. 06–466. PACIFIC GAS & ELECTRIC CO. *v.* SAN LUIS OBISPO MOTHERS FOR PEACE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 449 F. 3d 1016.

No. 06–489. CARSON CONCRETE CORP. ET AL. *v.* CHAO, SECRETARY OF LABOR. C. A. 3d Cir. Certiorari denied. Reported below: 168 Fed. Appx. 543.

No. 06–497. POTOMAC ELECTRIC POWER CO. ET AL. *v.* MASTRO. C. A. D. C. Cir. Certiorari denied. Reported below: 447 F. 3d 843.

No. 06–502. BANCOULT ET AL. *v.* MCNAMARA ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 445 F. 3d 427.

No. 06–516. ROSS, INDIVIDUALLY AND AS NEXT FRIEND OF ROSS ET AL., MINOR CHILDREN, ET AL. *v.* ALLSTATE TEXAS LLOYDS INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 3d 745.

No. 06–529. JONES, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JONES, DECEASED *v.* KISH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 438 F. 3d 685.

No. 06–616. CITY OF KENNEWICK, WASHINGTON, ET AL. *v.* ROGERS ET UX.; and

No. 06–626. DOPKE ET UX. *v.* ROGERS ET UX. C. A. 9th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 657.

No. 06–652. DIDDEN ET AL. *v.* VILLAGE OF PORT CHESTER, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 173 Fed. Appx. 931.

No. 06–655. WALLACE *v.* GRAPHIC MANAGEMENT ASSOCIATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 197 Fed. Appx. 138.

No. 06–662. MURESAN *v.* UNITED STATES TRUSTEE ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–686. IROMUANYA *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 272 Neb. 178, 719 N. W. 2d 263.

No. 06–721. BURRELL ET UX. *v.* ARMIJO, GOVERNOR OF SANTA ANA PUEBLO AND ACTING CHIEF OF SANTA ANA TRIBAL POLICE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 456 F. 3d 1159.

No. 06–732. EVANS, WRONGFUL DEATH BENEFICIARY OF EVANS *v.* DAILAMI-POUR. C. A. 5th Cir. Certiorari denied.

No. 06–733. COLLARD *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 06–743. ROBERT *v.* DEPARTMENT OF JUSTICE. C. A. 2d Cir. Certiorari denied. Reported below: 193 Fed. Appx. 8.

No. 06–761. SANDERS *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied. Reported below: 191 S. W. 3d 272.

No. 06–773. CLARK *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 197 S. W. 3d 598.

No. 06–784. HIRCZY *v.* HAMILTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 357.

No. 06–800. BOSLEY *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 06–802. CRAIG *v.* UNITED STATES (Reported below: 64 M. J. 175); BOLES *v.* UNITED STATES (64 M. J. 186); BRICKER *v.* UNITED STATES (64 M. J. 176); DIAZ *v.* UNITED STATES (64 M. J. 176); DURAN *v.* UNITED STATES (64 M. J. 229); DURFEE *v.* UNITED STATES (64 M. J. 178); FORNEY *v.* UNITED STATES (64 M. J. 175); FRANCOIS *v.* UNITED STATES (64 M. J. 176); GAINES *v.* UNITED STATES (64 M. J. 176); GILMORE *v.* UNITED STATES (64 M. J. 176); HARRIS *v.* UNITED STATES (64 M. J. 236); HUMPHREY *v.* UNITED STATES (64 M. J. 176); JENKINS *v.* UNITED STATES (64 M. J. 175); JOHNSON *v.* UNITED STATES (64 M. J. 176); KAMELY *v.* UNITED STATES (64 M. J. 176); LEGER *v.* UNITED STATES (64 M. J. 228); LUCAS *v.* UNITED STATES (64 M. J. 180); MCCLELLAND *v.* UNITED STATES (64 M. J. 176); OWENS *v.* UNITED STATES (64 M. J. 176); PHILLIPS *v.* UNITED STATES (64 M. J. 176); PRITCHETT *v.* UNITED

STATES (64 M. J. 177); RUGGS *v.* UNITED STATES (64 M. J. 176); SHILOH *v.* UNITED STATES (64 M. J. 177); SPENCER *v.* UNITED STATES (64 M. J. 176); SZYMCZYK *v.* UNITED STATES (64 M. J. 179); THOMPSON *v.* UNITED STATES (64 M. J. 175); TILMAN *v.* UNITED STATES (64 M. J. 176); WHITE *v.* UNITED STATES (64 M. J. 176); and WILLIAMS *v.* UNITED STATES (64 M. J. 176). C. A. Armed Forces. Certiorari denied.

No. 06–807. CAROPELO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–813. WOODALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 778.

No. 06–818. BOSTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 890.

No. 06–5113. NELSON *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 06–5142. MADRIGAL PAZ *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 06–5377. HAWKINS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 06–5451. JACKSON *v.* DINGLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 06–5634. BUTLER *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 06–6088. MCGEE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 38 Cal. 4th 682, 133 P. 3d 1054.

No. 06–6157. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 344.

No. 06–6345. CICCI *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 06–6358. BRYANT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–6563. RODRIGUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 178 Fed. Appx. 152.

No. 06–7048. TINER *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 340 Ore. 551, 135 P. 3d 305.

No. 06–7076. FINKELSTEIN *v.* SPITZER, ATTORNEY GENERAL OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 455 F. 3d 131.

No. 06–7140. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 448 F. 3d 1017.

No. 06–7549. SCHARF *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–7614. MITCHELL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 588 Pa. 19, 902 A. 2d 430.

No. 06–7664. SCHWAB *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 451 F. 3d 1308.

No. 06–7698. SMITH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 889 A. 2d 119.

No. 06–7704. CARTER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–7708. STANLEY *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 449 F. 3d 1060.

No. 06–7711. ELMS *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–7712. COMPTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–7713. CARY *v.* ROSENBLATT, JUDGE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 447.

No. 06–7714. ESMAEL *v.* UNITED KINGDOM SECRET INTELLIGENCE SERVICE. C. A. 9th Cir. Certiorari denied.

No. 06–7717. BALKUM *v.* PLESCIA, SUPERINTENDENT, WASHINGTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–7729. NORRIS *v.* HOUSING AUTHORITY OF NEW ORLEANS ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–7735. PAYAN *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 199 S. W. 3d 380.

No. 06–7746. ADAMES *v.* NEW YORK CITY BOARD OF ELECTIONS ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–7754. JACKSON *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 935 So. 2d 1108.

No. 06–7756. BLACKMAN *v.* DONAHUE, COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, ET AL.; and BLACKMAN *v.* HAALEK ET AL. C. A. 7th Cir. Certiorari denied.

No. 06–7759. JOHNSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–7761. WOODS *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7763. WALKER *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 610.

No. 06–7765. DOZIER *v.* RICCI, ASSOCIATE ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 199 Fed. Appx. 165.

No. 06–7771. WHITE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–7782. PORTER *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–7794. MOREFIELD *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 894 A. 2d 821.

No. 06–7795. DALLY *v.* O'FALLON, ADMINISTRATOR, CASCADE COUNTY REGIONAL ADULT DETENTION CENTER. Sup. Ct. Mont. Certiorari denied. Reported below: 333 Mont. 549, 143 P. 3d 702.

No. 06–7801. EQUELS *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 642.

No. 06–7806. LOVELY *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 437.

No. 06–7814. WHOLAVER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 588 Pa. 218, 903 A. 2d 1178.

No. 06–7820. COLE *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7844. CEO *v.* KLEM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–7879. JENNINGS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–7900. PEARSON *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–7913. CLARK *v.* JOHNSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 606.

No. 06–7918. BROWN *v.* STOWITZKY, SUPERINTENDENT, STATE REGIONAL CORRECTIONAL FACILITY AT MERCER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–7935. TAYLOR *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–7984. TURAY *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied.

No. 06–8028. GONZALEZ, AKA QUINONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 547.

No. 06–8041. HENDERAWAN *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 569.

No. 06–8046. MOORE *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 272 Neb. 71, 718 N. W. 2d 537.

No. 06–8060. HUSER *v.* ANTONELLI, TERRY, STOUT & KRAUS, LLP. C. A. 4th Cir. Certiorari denied. Reported below: 174 Fed. Appx. 754.

No. 06–8110. WHEELER *v.* SCHUETZLE, WARDEN. Sup. Ct. N. D. Certiorari denied.

No. 06–8111. MCLEAN *v.* STIENEKE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 180 Fed. Appx. 451.

No. 06–8156. SEGALLA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 192 Fed. Appx. 17.

No. 06–8177. ADAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 451 F. 3d 471.

No. 06–8203. WALKUP *v.* HAINES, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 06–8243. JARAMILLO *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–8248. ROBINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 824.

No. 06–8271. DIMAS-SALGADO, AKA DIMAS, AKA DIMAS SALGADO *v.* UNITED STATES (Reported below: 203 Fed. Appx. 610); LANZA-PAZ *v.* UNITED STATES (203 Fed. Appx. 623); TZEP-MEJIA *v.* UNITED STATES (461 F. 3d 522); VALDIVIA-CARDONA *v.* UNITED STATES (203 Fed. Appx. 649); GUZMAN-SANCHEZ *v.* UNITED STATES (203 Fed. Appx. 628); OVIEDO-VASQUEZ, AKA VASQUEZ-CORDERO *v.* UNITED STATES (203 Fed. Appx. 668); RODRIGUEZ-BENITEZ *v.* UNITED STATES (203 Fed. Appx. 656); VELASQUEZ-DIAZ *v.* UNITED STATES (203 Fed. Appx. 654); ESPIRICUETA-CASANOVA *v.* UNITED STATES (203 Fed. Appx. 653); and MARTINEZ *v.* UNITED STATES (203 Fed. Appx. 645). C. A. 5th Cir. Certiorari denied.

No. 06–8272. DORANTES-MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 765.

No. 06–8279. NOE, AKA RANDALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 216.

No. 06–8288. RAMSEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–8289. ROBERTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 278.

No. 06–8290. RUAN-DUVERNAY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–8293. KIMBALL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 373.

No. 06–8302. PHILLIPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 154.

No. 06–8304. MEZA-ESTRADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 544.

No. 06–8308. VENETUCCI *v.* DEPARTMENT OF STATE. C. A. 2d Cir. Certiorari denied. Reported below: 172 Fed. Appx. 337.

No. 06–8309. FICKEN *v.* RICE, SECRETARY OF STATE, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 06–8311. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 199 Fed. Appx. 23.

No. 06–8318. BONAPARTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8322. GATLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 798.

No. 06–8323. HUERTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 383.

No. 06–8328. ISLER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–8329. FLORES-GUZMAN, AKA FLORES-SOLIS *v.* UNITED STATES (Reported below: 198 Fed. Appx. 391); BETANCES-OCHOA, AKA LEYVA-RODRIGUEZ, AKA PORTILLO, AKA BETANCIAS-OCHOA, AKA OCHOA *v.* UNITED STATES (197 Fed. Appx. 373); CARILLO-GREGIO *v.* UNITED STATES (199 Fed. Appx. 370); GONZALEZ-SANCHEZ *v.* UNITED STATES (199 Fed. Appx. 382); LOPEZ-DELGADILLO *v.* UNITED STATES (199 Fed. Appx. 397); and OLIVAS-MONZARATE *v.* UNITED STATES (199 Fed. Appx. 380). C. A. 5th Cir. Certiorari denied.

No. 06–8331. MCGAUGHEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 305.

No. 06–8344. VANSACH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 3d 694.

No. 06–8345. TATUM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 810.

No. 06–8347. ARZOLA-AMAYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 231.

No. 06–8348. BOYLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8354. JUVENILE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 650.

No. 06–8357. WELLS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 195 Fed. Appx. 1.

No. 06–8359. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 432 F. 3d 1189.

No. 05–853. MCGOWAN *v.* NJR SERVICE CORP. ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 423 F. 3d 241.

No. 05–1101. UNITED STATES *v.* OMER. C. A. 9th Cir. Certiorari denied. Reported below: 395 F. 3d 1087.

Statement of JUSTICE SCALIA respecting the denial of the petition for writ of certiorari.

My dissent in *United States* v. *Resendiz-Ponce*, *ante*, p. 111, warned that the Court's opinion was "effecting a revolution in our jurisprudence regarding the requirements of an indictment," *ante*, at 114, and that it would provide a license for the Government to avoid explicating the elements of a criminal offense whenever it feels the "common parlance" of the crime's name evokes them, *ante*, at 111–112. I had not realized how quickly that license would be exercised. Barely 24 hours after we released *Resendiz-Ponce*, the Solicitor General filed a supplemental brief in this case, which raises the question (avoided in *Resendiz-Ponce*) whether the omission of an element of the offense from a federal indictment can constitute harmless error. The supplemental brief urged us not to grant review in this case for the following reason:

> "In the wake of the Court's decision in *Resendiz-Ponce* . . . it appears that the indictment in this case was not constitu-

> tionally deficient. As the Court has noted, it is well settled that the term 'fraud' requires a misrepresentation or concealment of material fact . . . just as the term 'attempt,' 'as used in the law for centuries,' encompasses an overt-act requirement, see *Resendiz-Ponce*, [*ante*, at 107]. The indictment [for fraud] in this case therefore need not have separately alleged that the scheme at issue (or any statement made in the course of the scheme) was materially false or deceptive." Supp. Brief for United States 2.

That is not the reason I concur in the Court's decision to deny certiorari. It may, however, be a good reason—depending upon how the crime of fraud fares in our new some-crimes-are-self-defining jurisprudence. Another frontier of law opened by this Court, full of opportunity and adventure for lawyers and judges.

No. 06–119. DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY *v.* FRIENDS OF THE EARTH, INC., ET AL. C. A. D. C. Cir. Motion of National Association of Clean Water Agencies et al. for leave to file a supplemental brief as *amici curiae* denied. Certiorari denied. Reported below: 446 F. 3d 140.

No. 06–407. SAVILLE *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. 10th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 188 Fed. Appx. 667.

No. 06–499. MORRISON *v.* BOARD OF LAW EXAMINERS OF NORTH CAROLINA ET AL. C. A. 4th Cir. Motion of Association of Corporate Counsel for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 453 F. 3d 190.

No. 06–760. COOPER, ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED, ET AL. *v.* IBM PERSONAL PENSION PLAN ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 457 F. 3d 636.

No. 06–5590. JOSEPH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 178 Fed. Appx. 162.

Statement of JUSTICE STEVENS respecting the denial of the petition for writ of certiorari.

In *Dickerson* v. *United States*, 530 U. S. 428 (2000), we held that the first sentence of 18 U. S. C. § 3501(a) is unconstitutional.

In this case the Court of Appeals affirmed the District Court's rejection of the petitioner's request for an instruction relating to the voluntariness of her confession—an instruction that the third sentence of § 3501(a) requires. The Court of Appeals reasoned that *Dickerson* had invalidated all of § 3501 and not just the first sentence. As the Solicitor General concedes, that holding was erroneous. While I am persuaded that the arguably harmless character of the trial judge's error provides a proper reason for denying the petition for certiorari, I think it important to note that our denial does not endorse the incorrect reasoning in the opinion of the Court of Appeals.

No. 06–7834. SIMMONS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. JUSTICE BREYER would grant the petition for writ of certiorari. Reported below: 191 S. W. 3d 557.

Rehearing Denied

No. 05–11647. WADLINGTON *v.* UNITED STATES, *ante*, p. 1077;

No. 06–6542. BURLISON *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, *ante*, p. 1037;

No. 06–6579. WILMS *v.* BROWN, *ante*, p. 1057; and

No. 06–6610. WHEELER *v.* NORTH DAKOTA, *ante*, p. 1038. Petitions for rehearing denied.

JANUARY 17, 2007

Certiorari Denied

No. 06–8864 (06A702). MOORE *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

JANUARY 19, 2007

Miscellaneous Order

No. 06A678. COALITION TO DEFEND AFFIRMATIVE ACTION ET AL. *v.* GRANHOLM, GOVERNOR OF MICHIGAN, ET AL. Application to vacate the stay entered by the United States Court of Appeals for the Sixth Circuit on December 29, 2006, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

Probable Jurisdiction Postponed

No. 06–618. OFFICE OF SENATOR MARK DAYTON *v.* HANSON. Appeal from C. A. D. C. Cir. Further consideration of question of jurisdiction postponed to hearing of case on the merits. In addition to the question presented by the statement as to jurisdiction, counsel are directed to brief and argue the following questions: "(1) Was the office of Senator Mark Dayton entitled to appeal the judgment of the Court of Appeals for the District of Columbia Circuit directly to this Court? (2) Was this case rendered moot by the expiration of the term of office of Senator Dayton?" THE CHIEF JUSTICE took no part in the consideration or decision of this case. Reported below: 459 F. 3d 1.

No. 06–969. FEDERAL ELECTION COMMISSION *v.* WISCONSIN RIGHT TO LIFE, INC.; and

No. 06–970. MCCAIN, UNITED STATES SENATOR, ET AL. *v.* WISCONSIN RIGHT TO LIFE, INC. Appeals from D. C. D. C. Further consideration of question of jurisdiction postponed to hearing of cases on the merits. Cases consolidated, and a total of one hour allotted for oral argument. Appellants' briefs are to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, February 23, 2007. Appellee's brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, March 23, 2007. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Wednesday, April 18, 2007. Reported below: 466 F. Supp. 2d 195.

Certiorari Granted

No. 05–1448. BECK, LIQUIDATING TRUSTEE OF THE ESTATES OF CROWN VANTAGE, INC., ET AL. *v.* PACE INTERNATIONAL UNION ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 427 F. 3d 668.

No. 06–134. PERMANENT MISSION OF INDIA TO THE UNITED NATIONS ET AL. *v.* CITY OF NEW YORK, NEW YORK. C. A. 2d Cir. Certiorari granted. Reported below: 446 F. 3d 365.

No. 06–562. UNITED STATES *v.* ATLANTIC RESEARCH CORP. C. A. 8th Cir. Certiorari granted. Reported below: 459 F. 3d 827.

No. 06–8120. BRENDLIN *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* granted.

Certiorari granted. Reported below: 38 Cal. 4th 1107, 136 P. 3d 845.

No. 05–85. POWEREX CORP. *v.* RELIANT ENERGY SERVICES, INC., ET AL. C. A. 9th Cir. Motions of Government of Canada and Province of British Columbia for leave to file briefs as *amici curiae* granted. Certiorari granted limited to Question 1 presented by the petition. In addition, the parties are directed to brief and argue the following question: "Whether the Court of Appeals had jurisdiction to review the District Court's remand order, notwithstanding 28 U. S. C. § 1447(d)." Reported below: 391 F. 3d 1011.

JANUARY 22, 2007

Certiorari Granted—Vacated and Remanded

No. 05–1630. GONZALES, ATTORNEY GENERAL *v.* PENULIAR. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gonzales* v. *Duenas-Alvarez*, *ante*, p. 183. Reported below: 435 F. 3d 961.

No. 05–11825. SOTO-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gonzales* v. *Duenas-Alvarez*, *ante*, p. 183. Reported below: 177 Fed. Appx. 557.

No. 06–6565. REGALADO-FLORES *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lopez* v. *Gonzales*, *ante*, p. 47. Reported below: 185 Fed. Appx. 397.

Miscellaneous Orders

No. 06–6668. THOMPSON ET UX. *v.* CALIFORNIA EX REL. MONTEREY MUSHROOMS, INC. Ct. App. Cal., 6th App. Dist. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 12, 2007, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 06–858. IN RE ODEH. C. A. 5th Cir. Petition for writ of common-law certiorari denied. Reported below: 185 Fed. Appx. 346.

No. 06–8509. IN RE WARD. Petition for writ of habeas corpus denied.

No. 06–8512. IN RE ANDREWS. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 06–698. IN RE VON ONDARZA; and
No. 06–7889. IN RE LANOUE. Petitions for writs of mandamus denied.

Certiorari Denied. (See also No. 06–858, *supra*.)

No. 06–234. INFORMATION SYSTEMS & NETWORKS CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 437 F. 3d 1173.

No. 06–406. WINSTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 444 F. 3d 115.

No. 06–435. DESSELLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 450 F. 3d 179.

No. 06–440. MCDONALD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 643.

No. 06–450. PUERTAS *v.* CARUSO, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 689.

No. 06–528. LUNDEEN ET AL. *v.* CANADIAN PACIFIC RAILWAY CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 447 F. 3d 606.

No. 06–542. D. F., BY HIS PARENT AND NATURAL GUARDIAN, FINKLE *v.* BOARD OF EDUCATION OF SYOSSET CENTRAL SCHOOL DISTRICT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 180 Fed. Appx. 232.

No. 06–564. CAMPBELL ET AL. *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 719 N. W. 2d 374.

No. 06–646. HANKIN FAMILY PARTNERSHIP ET AL. *v.* REALEN VALLEY FORGE GREENES ASSOCIATES. C. A. 3d Cir. Certiorari denied.

No. 06–677. NICHOLAW *v.* INFINITY BROADCASTING CORP. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–678. CAESAR *v.* MEGAMILLION BIGGAME LOTTERY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 193 Fed. Appx. 119.

No. 06–681. JONAS *v.* DISCOUNT AUTO CENTER. Ct. App. S. C. Certiorari denied.

No. 06–682. BOARD OF SUPERVISORS OF PALMYRA TOWNSHIP ET AL. *v.* LAKESIDE RESORT ENTERPRISES, LP, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 455 F. 3d 154.

No. 06–684. AFSCME LOCAL 818 ET AL. *v.* CITY OF WATERBURY, CONNECTICUT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 198 Fed. Appx. 47.

No. 06–685. FUESTING *v.* ZIMMER, INC. C. A. 7th Cir. Certiorari denied. Reported below: 448 F. 3d 936.

No. 06–693. FALKNER ET AL. *v.* INGLIS ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 448 F. 3d 1357.

No. 06–695. ABED ET UX. *v.* HIGGINS, INDEPENDENT EXECUTRIX OF THE ESTATE OF HIGGINS. Ct. App. Colo. Certiorari denied.

No. 06–699. COBB, WIDOW OF GIBBS *v.* CENTRAL STATES, SOUTHWEST AND SOUTHEAST AREAS PENSION FUND. C. A. 5th Cir. Certiorari denied. Reported below: 461 F. 3d 632.

No. 06–702. VAZQUEZ-VALENTIN *v.* SANTIAGO-DIAZ, INDIVIDUALLY AND AS MAYOR OF TOA BAJA, PUERTO RICO, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 459 F. 3d 144.

No. 06–704. SABO *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 06–706. ASH ET AL. *v.* TYSON FOODS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 924.

No. 06–707. ALASKA CONSTITUTIONAL LEGAL DEFENSE CONSERVATION FUND, INC., ET AL. *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 601.

No. 06–711. LORIZ ET UX. *v.* CONNAUGHTON ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–714. MORALES *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–716. KORSINSKY *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. (two judgments). C. A. 2d Cir. Certiorari denied. Reported below: 192 Fed. Appx. 42 (first judgment) and 71 (second judgment).

No. 06–731. SMYTH *v.* CARTER, ATTORNEY GENERAL OF INDIANA, ET AL. Ct. App. Ind. Certiorari denied. Reported below: 845 N. E. 2d 219.

No. 06–746. HYUNDAI MOTOR AMERICA *v.* RAZOR. Sup. Ct. Ill. Certiorari denied. Reported below: 222 Ill. 2d 75, 854 N. E. 2d 607.

No. 06–764. FREDERICK *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 936 So. 2d 580.

No. 06–775. WRONA *v.* OFFICE OF DISCIPLINARY COUNSEL OF THE SUPREME COURT OF PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 589 Pa. 337, 908 A. 2d 1281.

No. 06–793. A. A. ET AL. *v.* NEW JERSEY ET AL. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 384 N. J. Super. 481, 895 A. 2d 453.

No. 06–794. BLOCK *v.* KELLY SERVICES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 346.

No. 06–821. LATHER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 110 Ohio St. 3d 270, 853 N. E. 2d 279.

No. 06–842. MOMIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–849. COHEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 459 F. 3d 490.

No. 06–869. CRUZ-ARROYO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 461 F. 3d 69.

No. 06–6069. GARRETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 295.

No. 06–6096. HOLMES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–6647. BOYD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–6650. BARRY *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 445 F. 3d 741.

No. 06–6865. ELLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–7232. GUERRA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 37 Cal. 4th 1067, 129 P. 3d 321.

No. 06–7253. AGOFSKY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 3d 369.

No. 06–7269. VASQUEZ-GARCIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 449 F. 3d 870.

No. 06–7289. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 441 F. 3d 1330.

No. 06–7407. TINSLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 172 Fed. Appx. 431.

No. 06–7607. ALEXANDER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 354.

No. 06–7836. SWEATMON *v.* JONES ET AL. Ct. Sp. App. Md. Certiorari denied.

No. 06–7846. DALEY *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 199 Fed. Appx. 119.

No. 06–7861. HONG MAI *v.* SOUTHEAST PRODUCE ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 7 N. Y. 3d 825, 855 N. E. 2d 1168.

No. 06–7862. JERRY-EL *v.* PETSOCK ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–7868. CARDENAS *v.* BASE ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–7870. PHILLIPS *v.* PATRICK, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 678.

No. 06–7873. Z. W. *v.* FRANKLIN COUNTY CHILDREN SERVICES. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 06–7885. CONWAY *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–7898. FARINA *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 937 So. 2d 612.

No. 06–7901. PAYTON *v.* KRAMER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 584.

No. 06–7904. MAYER *v.* CORBETT, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 186 Fed. Appx. 262.

No. 06–7906. LAUER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–7909. WOODS *v.* BAYSTATE HEALTH SYSTEMS ET AL. C. A. 1st Cir. Certiorari denied.

No. 06–7927. WALKER *v.* WILKINSON, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 328.

No. 06–7929. MADISON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–7931. MOORE *v.* ZELLER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 793.

No. 06–7932. MILLER *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–7946. BURRELL *v.* MCILROY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 464 F. 3d 853.

No. 06–7981. MCCOLLUM *v.* WORKERS' COMPENSATION APPEAL BOARD (SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY). Commw. Ct. Pa. Certiorari denied.

No. 06–8027. GREENE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 197 S. W. 3d 76.

No. 06–8061. FREY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 588 Pa. 326, 904 A. 2d 866.

No. 06–8067. CREVELING *v.* WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 521.

No. 06–8107. MENEI *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 06–8130. HITTER *v.* HAGAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 324.

No. 06–8174. PARKER *v.* COPPEDGE ET UX. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 06–8179. GREGG *v.* NEW YORK CITY DEPARTMENT OF EDUCATION. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 22 App. Div. 3d 254, 801 N. Y. S. 2d 529.

No. 06–8235. FOLINO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 863 A. 2d 1222.

No. 06–8241. SMOCKS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 06–8265. WEBB *v.* DENNISON, CHAIRPERSON, NEW YORK BOARD OF PAROLE. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 26 App. Div. 3d 614, 810 N. Y. S. 2d 233.

No. 06–8306. KHAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 196 Fed. Appx. 45.

No. 06–8314. BATTLE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–8327. GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 399.

No. 06–8336. SILVEYRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 620.

No. 06–8337. ROBLES-ENRIQUEZ *v.* UNITED STATES (Reported below: 194 Fed. Appx. 189); and FRANCO-ISLAS, AKA ISLAS FRANCO *v.* UNITED STATES (209 Fed. Appx. 364). C. A. 5th Cir. Certiorari denied.

No. 06–8350. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 867.

No. 06–8351. IDRISS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–8358. XIAO HAN *v.* HANDIS. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 584.

No. 06–8360. FRIAS-ORTEGA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–8364. GUZMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 450 F. 3d 627.

No. 06–8367. HARDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 226.

No. 06–8368. HALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–8374. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8378. BERGARA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–8381. MUYET *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–8383. MENDOZA, AKA MENDOZA-VASQUEZ, AKA VASQUEZ-MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 425.

No. 06–8386. MILTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 209.

No. 06–8387. BENALLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 816.

No. 06–8388. AGUILAR-QUINONEZ *v.* UNITED STATES (Reported below: 203 Fed. Appx. 138); BAUTISTA-CONCEPCION *v.* UNITED STATES (207 Fed. Appx. 871); DIAZ-MARTINEZ *v.* UNITED STATES (199 Fed. Appx. 635); DUARTE-BENITEZ *v.* UNITED STATES (189 Fed. Appx. 679); GARCIA-SALLES *v.* UNITED STATES (196 Fed. Appx. 475); SANCHEZ-GOMORA, AKA GARCIA, AKA GOMORA, AKA PEREZ, AKA SANCHEZ *v.* UNITED STATES (193 Fed. Appx. 727); and TIRADO-JACOPO *v.* UNITED STATES (199 Fed. Appx. 634). C. A. 9th Cir. Certiorari denied.

No. 06–8398. EVANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 290.

No. 06–8400. DENIZE *v.* TAYLOR, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 229.

No. 06–8403. MARTINEZ-MOLINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 272.

No. 06–8405. DUMONDE, AKA SPENCER, AKA MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 788.

No. 06–8410. ROQUE-ESPIDIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 273.

No. 06–8411. SAMPLES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 456 F. 3d 875.

No. 06–8416. ABUSAID *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 951.

No. 06–8418. REUTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 463 F. 3d 792.

No. 06–8423. JURBALA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 198 Fed. Appx. 236.

No. 06–8424. LAZALDE-MURILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 546.

No. 06–8429. NICHOLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8431. CUEVAS-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 147.

No. 06–8432. CHRISTIAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 800.

No. 06–8433. COUGHLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 194.

No. 06–8435. KING *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 191 Fed. Appx. 153.

No. 06–8436. MANIBUSAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 940.

No. 06–8438. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 812.

No. 06–8451. TAPIA-PICENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 195.

No. 06–8452. VALDIVIA-PEREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 543.

No. 06–8453. TIRADO-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 280.

No. 06–8455. CUI QIN ZHANG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 458 F. 3d 1126.

No. 06–8456. VALDOVINOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 174.

No. 06–8463. WHITE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–8464. SLOAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8469. FIELDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 196 Fed. Appx. 77.

No. 06–8470. GARCIA-MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 682.

No. 06–8474. HUDGINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8475. GRUBBS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8476. HARRIOT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 180.

No. 06–8479. PLATA-OCEGUERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 186.

No. 06–8480. BURSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 150.

No. 06–8482. GREEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 519.

No. 06–8485. RICE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8491. CHAIDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 553.

No. 06–8495. WHITE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 3d 250.

No. 06–8496. VANDYCK-ALEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 215.

No. 06–8497. TORRANCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–8501. BAUGUS *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA. C. A. 9th Cir. Certiorari denied.

No. 06–400. SMITH *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motion of National Organization of Veterans' Advocates for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 451 F. 3d 1344.

No. 06–785. KORSINSKY *v.* MICROSOFT CORP. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 198 Fed. Appx. 931.

No. 06–7888. FEDERICO *v.* BANK OF AMERICA ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 06–8460. BURNAM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 192 Fed. Appx. 103.

Rehearing Denied

No. 06–142. BASSIOUNI *v.* FEDERAL BUREAU OF INVESTIGATION, *ante*, p. 1051;

No. 06–392. HENDERSON *v.* SONY PICTURES ENTERTAINMENT ET AL., *ante*, p. 1052;

No. 06–601. ODEH *v.* UNITED STATES, *ante*, p. 1079;

No. 06–5223. REEP *v.* UNITED STATES, *ante*, p. 903;

No. 06–6380. BORESS *v.* REYNOLDS ET AL., *ante*, p. 1035;

No. 06–7050. BROWN *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, *ante*, p. 1039;

No. 06–7278. ELLIS *v.* GONZALES, ATTORNEY GENERAL, ET AL., *ante*, p. 1065;

No. 06–7288. SOY *v.* UNITED STATES, *ante*, p. 1065;

No. 06–7402. PITTS *v.* UNITED STATES, *ante*, p. 1068; and

No. 06–7580. ROBINSON *v.* UNITED STATES, *ante*, p. 1087. Petitions for rehearing denied.

No. 06–421. HEMPHILL *v.* PROCTER & GAMBLE CO. ET AL., *ante*, p. 1071. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 06–5936. BARNETTE *v.* UNITED STATES, *ante*, p. 1090. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

FEBRUARY 12, 2007

Dismissal Under Rule 46

No. 06–606. ALTADIS USA, INC. *v.* SEA STAR LINE, LLC, ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1106.] Writ of certiorari dismissed under this Court's Rule 46.1.

FEBRUARY 16, 2007

Miscellaneous Orders

No. 05–983. WINKELMAN, A MINOR, BY AND THROUGH HIS PARENTS AND LEGAL GUARDIANS, WINKELMAN ET UX., ET AL. *v.* PARMA CITY SCHOOL DISTRICT. C. A. 6th Cir. [Certiorari granted, *ante*, p. 990.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–1056. MICROSOFT CORP. *v.* AT&T CORP. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 991.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 05–1631. SCOTT *v.* HARRIS. C. A. 11th Cir. [Certiorari granted, *ante*, p. 991.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

FEBRUARY 20, 2007

Certiorari Granted—Vacated and Remanded

No. 05–296. GOMEZ ET AL. *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Cunningham* v. *California*, *ante*, p. 270. Reported below: 163 S. W. 3d 632.

No. 05–816. CORTEZ CLARK *v.* COLORADO DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Reported below: 151 Fed. Appx. 630; and

No. 05–874. BEY *v.* JOHNSON ET AL. C. A. 6th Cir. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Jones* v. *Bock*, *ante*, p. 199. Reported below: 407 F. 3d 801.

No. 05–6698. BRADFORD *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.;

No. 05–6793. BLACK *v.* CALIFORNIA. Sup. Ct. Cal. Reported below: 35 Cal. 4th 1238, 113 P. 3d 534;

No. 05–7111. BORREGO PARRAS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Reported below: 128 Cal. App. 4th 1603, 27 Cal. Rptr. 3d 567;

No. 05–7309. MAUGAOTEGA *v.* HAWAII. Sup. Ct. Haw. Reported below: 107 Haw. 399, 114 P. 3d 905;

No. 05–7321. PICADO *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Reported below: 123 Cal. App. 4th 1216, 20 Cal. Rptr. 3d 647;

No. 05–7675. SALDANA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.;

No. 05–7721. MUNOZ SOTO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.;

No. 05–7809. HOWARD *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.;

No. 05–8031. SAMPLE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Reported below: 122 Cal. App. 4th 206, 18 Cal. Rptr. 3d 611;

No. 05–8831. TARANGO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.;

No. 05–9004. FRAWLEY *v.* NEW MEXICO. Sup. Ct. N. M.;

No. 05–9028. SANDOVAL *v.* NEW MEXICO. Sup. Ct. N. M.;

No. 05–9332. AUYON *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.;

No. 05–9485. ELLIOT *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–9549. QUINTANILLA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Reported below: 132 Cal. App. 4th 572, 33 Cal. Rptr. 3d 782;

No. 05–9582. FREEMAN *v.* NEW MEXICO. Sup. Ct. N. M.;

No. 05–9724. RAMIREZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.;

No. 05–9786. TEWOLDE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–9798. GOMEZ-RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–9803. MARIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–9818. BORDERS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–9831. HUGHES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–9843. SHEA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–9865. HERNANDEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–9876. CROTEAU *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1;

No. 05–9897. WILSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–9901. COX *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–9943. POWELL *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–9951. AGUILAR *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–9964. HICKS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–9981. DAVIE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.

No. 05–10011. JONES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–10015. DELAHOUSSAYE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–10053. DUNCAN *v.* TENNESSEE. Ct. Crim. App. Tenn.;

No. 05–10072. DOWNER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–10091. PANG *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 05–10113. HERNANDEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10124. SPRANKLE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–10165. COX *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10183. CARRILLO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10189. LEIGHTON *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 05–10193. TORRES *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.;

No. 05–10214. KING *v.* NEW MEXICO. Ct. App. N. M.;

No. 05–10215. JONES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10236. WHITE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Reported below: 133 Cal. App. 4th 473, 34 Cal. Rptr. 3d 848;

No. 05–10246. ROSAS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10247. RALBOVSKY *v.* CALIFORNIA. Sup. Ct. Cal.;

No. 05–10255. LU *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10256. KING *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–10272. HOLGUIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10278. THOMAS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Reported below: 133 Cal. App. 4th 488, 34 Cal. Rptr. 3d 858;

No. 05–10299. MAGANA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–10311. VELASQUEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10355. JONES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10362. SMITH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10385. GUTIERREZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10400. MARCHAND *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10401. PRUITT *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2;

No. 05–10408. OWENS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10428. ALASHANTI *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3;

No. 05–10429. ALLEN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 05–10435. BLACKWELL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10442. CZUB *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 05–10462. SANDERS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10466. ROBLES *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 05–10477. BRUMBAUGH *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 05–10485. SHEARER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1;

No. 05–10545. LOWRY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10565. ANDREAS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10588. TENG YANG *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 05–10589. WATSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10609. TURNER *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 05–10612. SMITH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10642. PERRY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10690. PHILLIPS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10742. SINDORF *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 05–10775. HUGHES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–10776. HILL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10788. MOORE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10793. BALL *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3;

No. 05–10802. CASTRO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10830. MATAMOROS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10894. ELAM *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10907. FETISSOVA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–10984. WHEELER *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 05–11002. ACOSTA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11004. MEDINA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11018. ORTEGA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–11045. KING *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11089. TAYLOR *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11104. NASH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11123. YNCLAN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 05–11141. LEARN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–11145. ALLEN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11149. VASQUEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1;

No. 05–11192. LEE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11203. MORRIS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–11204. CENICEROS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 05–11223. SPEARS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–11241. BANNER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11243. PAYTON *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 05–11269. BROWN *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.;

No. 05–11321. HAMILTON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11323. LEON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11327. MARTINEZ *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–11493. HOLZHAUSER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–11503. GALICIA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11522. GORE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 05–11569. ARRIAGA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 05–11610. BALLINGER *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 05–11618. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–11639. MAYZES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 05–11708. LIDDELL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 05–11712. PARTIN *v.* TENNESSEE. Ct. Crim. App. Tenn.;

No. 05–11736. FULLER *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 05–11765. MAYO *v.* TENNESSEE. Ct. Crim. App. Tenn.;

No. 05–11768. PEREZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–5050. SMITH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–5053. BELL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–5287. MCELROY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 06–5292. CLARK *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–5308. ARZATE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–5309. WHEELER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–5332. MURPHY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Reported below: 134 Cal. App. 4th 1504, 36 Cal. Rptr. 3d 872;

No. 06–5414. BARRAGAN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–5442. VIDEGAIN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–5500. FROEMEL *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 06–5586. LOPEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–5629. KENNER *v.* BELL, WARDEN. Ct. Crim. App. Tenn.;

No. 06–5690. MEEKS *v.* BELL, WARDEN. Ct. Crim. App. Tenn.;

No. 06–5691. BOYD *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 06–5757. MUSHARBASH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–5763. SEPULVEDA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–5989. LIGGION *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 06–5990. RITCHIE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–6027. TU *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 06–6292. RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–6381. BOUNDS *v.* NEW MEXICO. Sup. Ct. N. M.;

No. 06–6420. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–6428. ALAMOUTI *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–6468. MCCULLER *v.* MICHIGAN. Sup. Ct. Mich. Reported below: 475 Mich. 176, 715 N. W. 2d 798;

No. 06–6620. BARNES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–6655. GARCIA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–6703. BOCHICCHIO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–6760. MYERS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–6786. LOPEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–6790. GUARTOS *v.* TENNESSEE. Ct. Crim. App. Tenn.;

No. 06–6892. GUTIERREZ SOLORIO *v.* CALIFORNIA. Sup. Ct. Cal.;

No. 06–6992. NAYA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–7026. OLSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–7038. SWAIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–7105. CHEEKS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 06–7112. SIMENTAL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–7150. ESPINOZA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–7193. MARTINEZ LANDECHO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.;

No. 06–7233. HUGHES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 06–7301. ERVIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–7320. DUARTE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–7431. BAUTISTA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–7453. HYLTON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 06–7624. HARMON *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 06–7639. BAILEY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.;

No. 06–7739. RAMIREZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–7743. SENEGEL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–7766. REED *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–7796. YATES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 06–7977. SIQUEIROS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.;

No. 06–8101. MANUEL *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–8145. CALIXIO *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–8187. LAFAVOR *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–8194. SALINAS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–8208. JONES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 06–8224. RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–8373. GONZALEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–8380. MILLS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–8394. LEE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.; and

No. 06–8425. RISTAU *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Cunningham* v. *California*, *ante*, p. 270.

No. 05–7325. JOHNSON *v.* MONROE. C. A. 6th Cir.;

No. 05–7878. CONYERS *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir.;

No. 05–8894. VAZQUEZ *v.* RAGONESE ET AL. C. A. 3d Cir. Reported below: 142 Fed. Appx. 606;

No. 05–8975. BLAY *v.* REILLY ET AL. C. A. 10th Cir. Reported below: 152 Fed. Appx. 747;

No. 05–9335. BRANHAM *v.* MCCONNELL ET AL. C. A. 6th Cir.; and

No. 05–9617. STROPE *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Jones* v. *Bock*, *ante*, p. 199.

No. 06–396. KNOWLES, WARDEN *v.* MIRZAYANCE. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded

for further consideration in light of *Carey* v. *Musladin*, *ante*, p. 70. Reported below: 175 Fed. Appx. 142.

No. 06–6660. GUEVARA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Davis* v. *Washington*, 547 U. S. 813 (2006).

No. 06–7361. FERREIRA *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Burton* v. *Stewart*, *ante*, p. 147 *(per curiam)*. Reported below: 183 Fed. Appx. 885.

No. 06–7871. OCHOA-PEREZ *v.* UNITED STATES (Reported below: 195 Fed. Appx. 254); PADILLA-GOMEZ, AKA PADILLA, AKA MARTINEZ-VASQUEZ *v.* UNITED STATES (203 Fed. Appx. 597); ZAGAL-MERAZ *v.* UNITED STATES (203 Fed. Appx. 598); PENALOZA-HERNANDEZ, AKA HERNANDEZ, AKA HERNANDEZ-RODRIGUEZ, AKA PENALOSE HERNANDEZ, AKA PENALOZA HERNANDEZ *v.* UNITED STATES (202 Fed. Appx. 836); PRADO-ORTIZ *v.* UNITED STATES (203 Fed. Appx. 595); LOPEZ-RODRIGUEZ *v.* UNITED STATES (203 Fed. Appx. 600); RIVERA-ALVAREZ *v.* UNITED STATES (202 Fed. Appx. 830); REYES-OLVERA *v.* UNITED STATES (203 Fed. Appx. 599); TORRES, AKA TORRES-VALLES, AKA TORRES-BAEZ, AKA OCHOA-GOMEZ, AKA PEREZ-MESA *v.* UNITED STATES (202 Fed. Appx. 833); PEREZ-MONTERO, AKA ALFREDO *v.* UNITED STATES (203 Fed. Appx. 596); MONDRAGON-JIMINEZ, AKA JIMINEZ MONDRAGON, AKA MONDRAGON *v.* UNITED STATES (202 Fed. Appx. 835); ROCHA-GAYTAN *v.* UNITED STATES (202 Fed. Appx. 827); and RAMIREZ-ALVAREZ *v.* UNITED STATES (202 Fed. Appx. 828). C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and case remanded for further consideration in light of *Lopez* v. *Gonzales*, *ante*, p. 47.

Certiorari Dismissed

No. 06–8153. CRANE *v.* LAZARO ET AL. Ct. App. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 281 Ga. App. 127, 635 S. E. 2d 319.

No. 06–8266. OKPALA *v.* DREW, WARDEN, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 193 Fed. Appx. 850.

No. 06–8299. ANDREWS *v.* HAFEY ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–8420. STEPHEN *v.* HERNANDEZ, WARDEN, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–8445. MURDOCK *v.* AMERICAN EXPRESS CENTURION BANK ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 06A498. CUNNINGHAM *v.* UNITED STATES. Application for certificate of appealability, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. 06A619 (06–875). RODRIGUEZ *v.* PEREIRA ET AL. Sup. Ct. Va. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. 06A715 (06–875). RODRIGUEZ *v.* PEREIRA ET AL. Sup. Ct. Va. Application for preliminary injunction, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. 06M59. RAMIREZ *v.* CALIFORNIA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 06M60. M. S. *v.* I. P. ET AL.;

No. 06M61. FRANCIS *v.* BLAIKIE GROUP;

No. 06M62. DICKSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION;

No. 06M64. PATTERSON *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL.; and

No. 06M65. GLEAN *v.* UNIVERSITY OF GEORGIA, DBA MEDICAL COLLEGE GA, ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06M63. GRAY *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal denied.

No. 132, Orig. ALABAMA ET AL. *v.* NORTH CAROLINA. Motion of the Special Master for allowance of fees and reimbursement of expenses granted, and the Special Master is awarded a total of $75,272.38 for the period November 17, 2003, through October 31, 2006, to be paid equally by the parties. [For earlier order herein, see 540 U. S. 1014.]

No. 05–1157. CREDIT SUISSE SECURITIES (USA) LLC, FKA CREDIT SUISSE FIRST BOSTON LLC, ET AL. *v.* BILLING ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1092.] Motions of Securities Industry and Financial Markets Association et al., Washington Legal Foundation, National Association of Securities Dealers, Inc., NYSE Group, Inc., and W. R. Hambrecht + Co., LLC, for leave to file briefs as *amici curiae* granted. THE CHIEF JUSTICE took no part in the consideration or decision of these motions.

No. 06–405. RAY *v.* CSX TRANSPORTATION, INC., *ante*, p. 1053. Respondent is invited to file a response to the petition for rehearing within 30 days.

No. 06–415. SELIG, DIRECTOR, ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL. *v.* PEDIATRIC SPECIALTY CARE, INC., ET AL. C. A. 8th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 06–8662. IN RE SWANSON. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March, 13, 2007, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 06–931. IN RE PATTERSON-BEGGS;
No. 06–8448. IN RE PARACHA;
No. 06–8605. IN RE MILLER;
No. 06–8690. IN RE MORRIS;
No. 06–8738. IN RE DAVIS;
No. 06–8768. IN RE THOMAS;
No. 06–8805. IN RE PROCTOR;
No. 06–8861. IN RE TURNER;
No. 06–8900. IN RE BRAMMER; and
No. 06–9112. IN RE SIMS. Petitions for writs of habeas corpus denied.

No. 06–8902. IN RE BREWER. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 06–809. IN RE PATTERSON-BEGGS;
No. 06–810. IN RE JONES;
No. 06–846. IN RE M2 SOFTWARE, INC.;
No. 06–7793. IN RE BECKHAM;
No. 06–8132. IN RE FRYER;
No. 06–8295. IN RE ROSS;
No. 06–8449. IN RE PARACHA;
No. 06–8478. IN RE WILSON; and
No. 06–8529. IN RE BEST. Petitions for writs of mandamus denied.

No. 06–745. IN RE STACEY. Petition for writ of mandamus denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 06–754. IN RE VEY; and
No. 06–8270. IN RE WALKER. Petitions for writs of mandamus and/or prohibition denied.

No. 06–8904. IN RE WATTLETON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 06–766. NEW YORK STATE BOARD OF ELECTIONS ET AL. *v.* LOPEZ TORRES ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 462 F. 3d 161.

No. 06–6911. LOGAN *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 453 F. 3d 804.

Certiorari Denied

No. 05–107. DAVIS *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 392 F. 3d 834.

No. 05–878. HERRERA ET AL. *v.* LIRA. C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 3d 1164.

No. 05–6549. DIAZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 05–8134. HARLESS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 125 Cal. App. 4th 70, 22 Cal. Rptr. 3d 625.

No. 05–8991. ACKERMAN *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 124 Cal. App. 4th 184, 21 Cal. Rptr. 3d 143.

No. 05–10181. CHAVEZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–10263. SEEVERS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–10553. SILVAS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–10645. CONERLY *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 05–11622. SWANSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 270.

No. 05–11685. YOUNG *v.* 7-ELEVEN, INC. C. A. 5th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 302.

No. 06–271. SKOROS, INDIVIDUALLY AND AS NEXT FRIEND OF TINE ET AL. *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 437 F. 3d 1.

No. 06–338. LACAVERA *v.* DUDAS, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 441 F. 3d 1380.

No. 06–384. BUSTAMANTE-BARRERA *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 447 F. 3d 388.

No. 06–419. PEDIATRIC SPECIALTY CARE, INC., ET AL. *v.* ARKANSAS DEPARTMENT OF HUMAN SERVICES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 444 F. 3d 991.

No. 06–478. DOW CHEMICAL CO. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 435 F. 3d 594.

No. 06–482. HONEYVILLE GRAIN, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 10th Cir. Certiorari denied. Reported below: 444 F. 3d 1269.

No. 06–492. CURRY COUNTY, OREGON, ET AL. *v.* DARK. C. A. 9th Cir. Certiorari denied. Reported below: 451 F. 3d 1078.

No. 06–518. CHADDA *v.* GILLESPIE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 139 Fed. Appx. 440.

No. 06–543. ILLINOIS PUBLIC TELECOMMUNICATIONS ASSN. *v.* ILLINOIS COMMERCE COMMISSION ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 361 Ill. App. 3d 1081, 911 N. E. 2d 2.

No. 06–576. JES PROPERTIES, INC., DBA CYPRESS TRAILS FARM, ET AL. *v.* USA EQUESTRIAN TRUST, INC., FKA USA EQUESTRIAN, INC., FKA AMERICAN HORSE SHOW ASSN., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 458 F. 3d 1224.

No. 06–577. SCHOR *v.* ABBOTT LABORATORIES. C. A. 7th Cir. Certiorari denied. Reported below: 457 F. 3d 608.

No. 06–596. FIEGER *v.* MICHIGAN GRIEVANCE ADMINISTRATOR. Sup. Ct. Mich. Certiorari denied. Reported below: 476 Mich. 231, 719 N. W. 2d 123.

No. 06–619. BACCARAT FREMONT DEVELOPERS, LLC *v.* UNITED STATES ARMY CORPS OF ENGINEERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 425 F. 3d 1150.

No. 06–633. PHILIP MORRIS USA, INC., ET AL. *v.* MINNESOTA; and

No. 06–805. COUNCIL OF INDEPENDENT TOBACCO MANUFACTURERS OF AMERICA *v.* PHILIP MORRIS USA, INC., ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 713 N. W. 2d 350.

No. 06–651. MELLEY ET AL. *v.* BLUE CROSS AND BLUE SHIELD OF NORTHEASTERN PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 454 F. 3d 120.

No. 06–658. MCCARRAN INTERNATIONAL AIRPORT ET AL. *v.* SISOLAK. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 645, 137 P. 3d 1110.

No. 06–659. COLTEC INDUSTRIES, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 454 F. 3d 1340.

No. 06–663. TELKOM SA LTD. *v.* TELCORDIA TECHNOLOGIES, INC. C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 3d 172.

No. 06–667. MALDONADO *v.* FORD MOTOR CO. Sup. Ct. Mich. Certiorari denied. Reported below: 476 Mich. 372, 719 N. W. 2d 809.

No. 06–670. WILLIS *v.* GOVERNMENT ACCOUNTABILITY OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 448 F. 3d 1341.

No. 06–674. BRADFISCH ET AL. *v.* TEMPLETON FUNDS, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 973.

No. 06–676. OKWEDY ET AL. *v.* MOLINARI, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE BOROUGH OF STATEN ISLAND, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 195 Fed. Appx. 7.

No. 06–692. GONZALEZ-VERA ET AL. *v.* KISSINGER ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 449 F. 3d 1260.

No. 06–719. BENDER ET AL. *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 906 A. 2d 277.

No. 06–724. MCCARTHY *v.* SUPREME COURT OF CALIFORNIA ET AL. Sup. Ct. Cal. Certiorari denied.

No. 06–737. CLEM, ADMINISTRATOR OF THE ESTATE OF CLEM, ET AL. *v.* WESTERN HERITAGE INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 328.

No. 06–738. BISHOP *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 06–742. ROMANELLI *v.* BOARD OF ELECTIONS ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 589 Pa. 360, 909 A. 2d 299.

No. 06–748. LIVELY *v.* WILD OATS MARKETS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 456 F. 3d 933.

No. 06–751. ROBERTS *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–752. ESTATES IN EAGLE RIDGE, LLLP, ET AL. *v.* VALLEY BANK & TRUST. Ct. App. Colo. Certiorari denied. Reported below: 141 P. 3d 838.

No. 06–753. SCHNEIDER *v.* KIRWAN FINANCIAL GROUP, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 460 F. 3d 494.

No. 06–755. WARREN *v.* VOLUSIA COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 859.

No. 06–756. DIFFENDAL *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 168 Md. App. 765.

No. 06–758. LYNCH *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 225.

No. 06–762. RODGERS ET AL., ADMINISTRATORS OF THE ESTATE OF RODGERS, ET AL. *v.* SMITH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 175.

No. 06–763. ILLINOIS CENTRAL RAILROAD CO. *v.* MCDANIEL. Sup. Ct. Miss. Certiorari denied. Reported below: 951 So. 2d 523.

No. 06–768. TOWN OF MOUNT PLEASANT, NEW YORK *v.* LEGION OF CHRIST, INC. Ct. App. N. Y. Certiorari denied. Reported below: 7 N. Y. 3d 122, 850 N. E. 2d 1147.

No. 06–772. REPUBLIC OF SUDAN *v.* RUX ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 461 F. 3d 461.

No. 06–776. WEBER, TRUSTEE *v.* IOWA STATE BANK & TRUST COMPANY OF FAIRFIELD, IOWA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 457 F. 3d 857.

No. 06–777. A. F., A MINOR, ET AL. *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 06–780. DAVIS *v.* GEORGE MASON UNIVERSITY. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 248.

No. 06–781. HENDRIX *v.* PAULSON, SECRETARY OF THE TREASURY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 68.

No. 06–783. HOBBS ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–786. LOCKLEAR *v.* BERGMAN & BEVING AB ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 457 F. 3d 363.

No. 06–787. PROTECT MARRIAGE ILLINOIS ET AL. *v.* ORR ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 463 F. 3d 604.

No. 06–788. IBAR *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 938 So. 2d 451.

No. 06–790. LINCOLN LOAN CO. *v.* CITY OF PORTLAND, OREGON, ET AL. Sup. Ct. Ore. Certiorari denied. Reported below: 340 Ore. 613, 136 P. 3d 1.

No. 06–791. WHITE HAT MANAGEMENT, LLC *v.* BLOUNT-HILL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 482.

No. 06–796. RATTNER ET AL. *v.* CITY OF BOULDER CITY, NEVADA, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 77, 178 P. 3d 795.

No. 06–798. THERESA *v.* FETKY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–803. DAMON *v.* AIR PACIFIC LTD. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 33.

No. 06–804. CAMAN *v.* CONTINENTAL AIRLINES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 455 F. 3d 1087.

No. 06–811. PARKINSON *v.* SOMERFORD CORP. ET AL. Cir. Ct. Anne Arundel County, Md. Certiorari denied.

No. 06–812. SIMMONS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 934 So. 2d 1100.

No. 06–816. BARCLAY ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 443 F. 3d 1368.

No. 06–820. DUBIN *v.* REAL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 528.

No. 06–822. KOCHERT *v.* GREATER LAFAYETTE HEALTH SERVICES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 463 F. 3d 710.

No. 06–823. TAL ET AL. *v.* HOGAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 453 F. 3d 1244.

No. 06–824. WAGGONER ET AL. *v.* SUISSE SECURITY BANK & TRUST, LTD. C. A. 2d Cir. Certiorari denied. Reported below: 442 F. 3d 767.

No. 06–825. BANKS *v.* GRANHOLM, GOVERNOR OF MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–826. BRUH *v.* BESSEMER VENTURE PARTNERS III L. P. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 3d 202.

No. 06–832. CASTRO ET AL. *v.* PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 198 Fed. Appx. 20.

No. 06–833. SITOMER ET AL. *v.* KING, CHIEF JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 449 F. 3d 1272.

No. 06–834. SONTAG *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 179 Fed. Appx. 866.

No. 06–835. TAYLOR *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 175 Fed. Appx. 335.

No. 06–838. ORTIZ-NAVA *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 467.

No. 06–840. ADAMS *v.* GONZALES, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied.

No. 06–841. DAVIS *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 190 Fed. Appx. 951.

No. 06–845. M2 SOFTWARE, INC. *v.* MADACY ENTERTAINMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 463 F. 3d 870.

No. 06–847. MORRIS *v.* WROBLE, JUDGE, CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 915.

No. 06–848. CIGARETTES CHEAPER! *v.* R. J. REYNOLDS TOBACCO CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 462 F. 3d 690.

No. 06–851. JIANG *v.* GONZALES, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 165 Fed. Appx. 62.

No. 06–852. KERI *v.* BOARD OF TRUSTEES OF PURDUE UNIVERSITY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 3d 620.

No. 06–855. THOMAS *v.* HASSLER ET AL. Sup. Ct. Haw. Certiorari denied. Reported below: 111 Haw. 253, 140 P. 3d 1033.

No. 06–860. STEARMAN *v.* SMITH ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–862. AREVALOS-ALFARO *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 06–864. ISLAM *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 366.

No. 06–872. WIGGINS *v.* VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 295.

No. 06–874. BLUE *v.* DEFENSE LOGISTICS AGENCY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 181 Fed. Appx. 272.

No. 06–879. RITCHIE *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 451 F. 3d 1019.

No. 06–883. DOMINGUEZ *v.* BARNEDO ET VIR. Sup. Ct. Haw. Certiorari denied. Reported below: 112 Haw. 111, 144 P. 3d 22.

No. 06–884. CHATMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 357 Ill. App. 3d 695, 830 N. E. 2d 21.

No. 06–885. BLACKWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 459 F. 3d 739.

No. 06–890. MTA NEW YORK CITY TRANSIT AUTHORITY *v.* REITER. C. A. 2d Cir. Certiorari denied. Reported below: 457 F. 3d 224.

No. 06–904. LEE *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 849 N. E. 2d 602.

No. 06–905. MAHER ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 7th Cir. Certiorari denied. Reported below: 441 F. 3d 522.

No. 06–908. DUMARCE ET AL. *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 446 F. 3d 1294.

No. 06–910. COX *v.* GATES, SECRETARY OF DEFENSE. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 329.

No. 06–919. RANTZ *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 06–925. VERBAL *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 177 N. C. App. 289, 628 S. E. 2d 260.

No. 06–930. RASHID *v.* GONZALES, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 676.

No. 06–932. BUTLER ET AL. *v.* NEW YORK TEAMSTERS CONFERENCE PENSION AND RETIREMENT FUND. C. A. 2d Cir. Certiorari denied. Reported below: 171 Fed. Appx. 893.

No. 06–940. BRUNETTI *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 279 Conn. 39, 901 A. 2d 1.

No. 06–941. STRYKER CORP. ET AL. *v.* PIONEER LABORATORIES, INC., DBA PIONEER SURGICAL TECHNOLOGY. C. A. Fed. Cir. Certiorari denied. Reported below: 192 Fed. Appx. 970.

No. 06–942. WAKSAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–947. LATTERA ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 437 F. 3d 399.

No. 06–950. BEGUIRISTAIN ET AL. *v.* UNITED STATES;
No. 06–968. AGUERO ET AL. *v.* UNITED STATES; and
No. 06–991. GARCIA ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 455 F. 3d 1273.

No. 06–964. LOVETT *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 63 M. J. 211.

No. 06–974. ABRAMOV *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–979. RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 144.

No. 06–980. COIL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 442 F. 3d 912.

No. 06–5369. MARION *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–6112. YOUNG *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 365 Ill. App. 3d 753, 850 N. E. 2d 284.

No. 06–6439. MARR *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 06–6549. PATTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 451 F. 3d 615.

No. 06–6593. RIGDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–6678. GARRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 33.

No. 06–6687. ANGLIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 971.

No. 06–6916. FUSTER-ESCALONA *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 627.

No. 06–6988. AGUIAR *v.* GONZALES, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied. Reported below: 438 F. 3d 86.

No. 06–7033. LEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 603.

No. 06–7058. WILLIAMS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 586 Pa. 553, 896 A. 2d 523.

No. 06–7072. CRAMER *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of San Diego. Certiorari denied.

No. 06–7099. GIORDANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 442 F. 3d 30 and 172 Fed. Appx. 340.

No. 06–7183. KRAUSE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 06–7239. HALL, AKA FRANKLIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 462 F. 3d 684.

No. 06–7331. BELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 610.

No. 06–7356. ALEX *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS. Sup. Ct. La. Certiorari denied. Reported below: 936 So. 2d 194.

No. 06–7367. FREGOSO *v.* CALIFORNIA; and
No. 06–7773. VASQUEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 39 Cal. 4th 47, 137 P. 3d 199.

No. 06–7397. CHRISTIAN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 63 M. J. 205.

No. 06–7450. GALLUCCI *v.* CHAO, SECRETARY OF LABOR. C. A. D. C. Cir. Certiorari denied.

No. 06–7454. GOODWIN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 191 S. W. 3d 20.

No. 06–7577. BOWEN *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 340 Ore. 487, 135 P. 3d 272.

No. 06–7594. SQUETIMKIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 573.

No. 06–7606. BROOKS *v.* SUPERVALU, INC. C. A. 10th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 818.

No. 06–7633. CHARLES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 456 F. 3d 249.

No. 06–7681. KNIGHT *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 518.

No. 06–7710. RODRIGUEZ-PRECIADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 607.

No. 06–7738. ROBERSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 459 F. 3d 39.

No. 06–7832. GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 253.

No. 06–7858. WHITE *v.* HOUK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7899. TURLEY *v.* SCI OF ALABAMA, DBA FUNERAL SERVICES OF ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 844.

No. 06–7911. ELROD *v.* JAMROG, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7912. DYKAS *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–7914. COLLINS *v.* OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 827.

No. 06–7915. HUERTA DELACERDA *v.* SCHWARTZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 621.

No. 06–7937. ANTHONY *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 942 So. 2d 412.

No. 06–7938. BALL *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 281 Ga. 14, 635 S. E. 2d 723.

No. 06–7942. E. B. *v.* T. J. ET AL. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 06–7945. STRONG *v.* PENNSYLVANIA. Luzerne County Court, Pa. Certiorari denied.

No. 06–7950. HARVEY *v.* WACKENHUT CORP. ET AL. Ct. App. Minn. Certiorari denied.

No. 06–7952. FLUELLEN *v.* LAW OFFICES OF FENSTERSHEIB & FOX ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 936 So. 2d 565.

No. 06–7956. HAWKINS *v.* PERLMAN, SUPERINTENDENT, MID-STATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 3d 238.

No. 06–7959. GUERRA *v.* ALAMEDA COUNTY, CALIFORNIA, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 06–7962. DUBOIS *v.* ASSOCIATION OF APARTMENT OWNERS OF 2987 KALAKAUA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 453 F. 3d 1175.

No. 06–7964. ELIAS *v.* DOMINGUEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 567.

No. 06–7967. BROWN *v.* CHICAGO TRANSIT AUTHORITY RETIREMENT PLAN. C. A. 7th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 475.

No. 06–7969. TOWARD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 932 So. 2d 1086.

No. 06–7973. POINTDUJOUR *v.* MOUNT SINAI HOSPITAL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 121 Fed. Appx. 895.

No. 06–7974. PINEDA *v.* NUGENT. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–7979. SWEARINGEN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 300.

No. 06–7985. ANDERSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 462 F. 3d 1319.

No. 06–7993. MILLS *v.* HULICK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–7996. MALHOTRA *v.* WATERGATE AT LANDMARK CONDOMINIUM ASSN. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 522.

No. 06–8000. LEWIS *v.* ELLIOT ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–8002. JACKSON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 06–8004. JOHNSON *v.* WASHINGTON DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–8005. JENNINGS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–8007. WALKER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 177.

No. 06–8011. KERSEY *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C. Certiorari denied. Reported below: 897 A. 2d 198.

No. 06–8013. PHILLIPS *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–8015. ROSE *v.* MAYBERG, DIRECTOR, CALIFORNIA DEPARTMENT OF MENTAL HEALTH. C. A. 9th Cir. Certiorari denied. Reported below: 454 F. 3d 958 and 189 Fed. Appx. 656.

No. 06–8016. STEWART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 892.

No. 06–8017. SMYRE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 216.

No. 06–8019. BANGA *v.* WORLD SAVINGS & LOAN ASSN. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 06–8021. AMAN *v.* JOHNSTON. App. Ct. Mass. Certiorari denied. Reported below: 66 Mass. App. 1102, 845 N. E. 2d 450.

No. 06–8031. HAND *v.* OHIO. Ct. App. Ohio, Delaware County. Certiorari denied.

No. 06–8032. YOUNGER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 931 So. 2d 1289.

No. 06–8035. BENNETT *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 903 A. 2d 853.

No. 06–8039. BEATY *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 06–8040. BROWN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Va. Certiorari denied.

No. 06–8042. SOTELO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–8045. MUWWAKKIL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–8047. WHITE *v.* BATTAGLIA, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 454 F. 3d 705.

No. 06–8050. SLAKMAN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 280 Ga. 837, 632 S. E. 2d 378.

No. 06–8052. LUTHER *v.* OHIO; LUTHER *v.* OHIO; and SMITH *v.* OHIO. Ct. App. Ohio, Lorain County. Certiorari denied.

No. 06–8056. JOHNSON *v.* WILSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 455.

No. 06–8057. MARTIN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–8062. HERNANDEZ *v.* UNITED STATES (Reported below: 195 Fed. Appx. 224); SMITH *v.* UNITED STATES (202 Fed. Appx. 14); TURNER *v.* UNITED STATES (202 Fed. Appx. 29); GARCIA *v.* UNITED STATES (203 Fed. Appx. 622); JENDRZEY *v.* UNITED STATES (203 Fed. Appx. 629); LUGO-VARGAS *v.* UNITED STATES (203 Fed. Appx. 619); and GARCIA *v.* UNITED STATES (205 Fed. Appx. 259). C. A. 5th Cir. Certiorari denied.

No. 06–8063. GROEBNER *v.* MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–8066. ELIAS *v.* DOMINGUEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 633.

No. 06–8071. THOMAS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 06–8072. CHANDLER *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 06–8073. DORSEY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8080. ENRIQUEZ *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 06–8081. CRUTCHFIELD *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 353 Ill. App. 3d 1014, 820 N. E. 2d 507.

No. 06–8082. CRAWFORD *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–8083. DANIEL *v.* UNITED STATES MARSHALS SERVICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 954.

No. 06–8087. MOORE *v.* 19TH HOLE RESTAURANT ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–8092. FRANKLIN *v.* KANSAS DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 160 Fed. Appx. 730.

No. 06–8094. HENDERSON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 06–8100. KANDEKORE *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 3d 276.

No. 06–8103. DICUS *v.* CHANOS, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 642.

No. 06–8112. CABALLERO *v.* COURT OF APPEALS OF TEXAS, FIFTH DISTRICT. Sup. Ct. Tex. Certiorari denied.

No. 06–8115. BONGA *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8116. BARODI *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 06–8121. BURTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 441 F. 3d 509.

No. 06–8126. STALEY *v.* HALL, WARDEN (three judgments). C. A. 11th Cir. Certiorari denied.

No. 06–8128. CLARK *v.* WORKMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 06–8131. FOSTER *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 06–8133. FRANKLIN *v.* WELSH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 675.

No. 06–8134. FARROW *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8135. HANSEN *v.* VAMPOLA ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–8137. FABELA *v.* WARD, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 644.

No. 06–8138. HUGHES *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8139. HIPSHER *v.* WALLACE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–8141. GARCIA *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8144. CULBERT *v.* PENNINGTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 275.

No. 06–8151. PALERMO *v.* MILLER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 234.

No. 06–8154. CAREY *v.* TEXAS (two judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 06–8155. CLINE *v.* TEXAS BOARD OF CRIMINAL JUSTICE ET AL. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 06–8159. RIVERA *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 06–8163. BROWN, AKA WILLIAMS *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–8167. TROSTLE *v.* AVERY. Sup. Ct. Mich. Certiorari denied.

No. 06–8170. LEGER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 936 So. 2d 108.

No. 06–8171. FOSTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8173. THOMAS *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 187 Fed. Appx. 47.

No. 06–8180. DEAN *v.* RUSSELL, JUDGE, DISTRICT COURT OF TEXAS, SMITH COUNTY. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 06–8181. QUAGLIANI *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 06–8183. HOBBS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8184. GROCE *v.* POWELL ET AL. C. A. D. C. Cir. Certiorari denied.

No. 06–8185. MOORE *v.* CEASE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE FOR THE CITY OF WILMINGTON, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 176.

No. 06–8189. LYNCH *v.* WEBB. C. A. 6th Cir. Certiorari denied.

No. 06–8196. PREBLE *v.* ESTEP, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 697.

No. 06–8197. MCKINNON *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 202.

No. 06–8198. SMITH *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–8205. WHITE *v.* BURGESS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–8210. LEWIS *v.* KANSAS DEPARTMENT OF REVENUE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 181 Fed. Appx. 732.

No. 06–8211. DEMETRULIAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 39 Cal. 4th 1, 137 P. 3d 229.

No. 06–8223. MARTINEZ-RIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 17.

No. 06–8227. SHEPPARD *v.* DiGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–8229. POWELL *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 394 Md. 632, 907 A. 2d 242.

No. 06–8230. JONES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8233. GISSENDANNER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 949 So. 2d 956.

No. 06–8251. KOZUH *v.* NICHOLS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 874.

No. 06–8252. POPE *v.* MALFI, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 606.

No. 06–8255. OWENS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8263. NIGL *v.* KINGSTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–8264. MCKINNEY *v.* APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT. Sup. Ct. Ill. Certiorari denied.

No. 06–8269. POE *v.* J E P ENTERPRISES, LP, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 259.

No. 06–8274. ENGESSER *v.* DOOLEY, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 457 F. 3d 731.

No. 06–8275. JACKSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8281. PITTS *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 937 So. 2d 1108.

No. 06–8282. MARTINI *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 187 N. J. 469, 901 A. 2d 941.

No. 06–8283. JACKSON *v.* JACKSON. C. A. 10th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 745.

No. 06–8286. MCGOWAN *v.* TENNESSEE DEPARTMENT OF CORRECTION. Ct. App. Tenn. Certiorari denied.

No. 06–8291. SCOTT *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 190 Fed. Appx. 196.

No. 06–8292. WILLIAMS *v.* BEDINFIELD ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–8294. MCNEW *v.* LEMON ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–8296. ADDAMS-MORE *v.* GILL ET AL. Sup. Ct. Cal. Certiorari denied.

No. 06–8297. ANDERSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 196 S. W. 3d 28.

No. 06–8298. BEARD *v.* DOMINGUEZ. Ct. App. Ind. Certiorari denied. Reported below: 847 N. E. 2d 1054.

No. 06–8300. BAK *v.* BAK. Sup. Ct. Fla. Certiorari denied. Reported below: 935 So. 2d 1219.

No. 06–8301. MCGRATH *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 277 Ga. App. 825, 627 S. E. 2d 866.

No. 06–8303. NEAL *v.* PINELLAS COUNTY SHERIFF'S OFFICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 855.

No. 06–8307. MAKAS *v.* BENNETT ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–8310. WEST *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 625.

No. 06–8315. BURDEN *v.* HEMPELMAN ET AL. C. A. 10th Cir. Certiorari denied.

No. 06–8316. BOZEMAN *v.* KERSHAW CORRECTIONAL INSTITUTION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 274.

No. 06–8317. BACKMAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 06–8319. BROWN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 700.

No. 06–8320. ROBERSON *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 462.

No. 06–8321. SANCHEZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1093, 841 N. E. 2d 478.

No. 06–8325. GARCIA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 201 S. W. 3d 695.

No. 06–8326. HENSON *v.* BROWN. C. A. 7th Cir. Certiorari denied.

No. 06–8330. GLOVER *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–8333. DAVIS *v.* BILOXI PUBLIC SCHOOL DISTRICT ET AL. Ct. App. Miss. Certiorari denied. Reported below: 937 So. 2d 459.

No. 06–8335. DAVIS *v.* RUNNELS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 615.

No. 06–8339. MONTGOMERY-BROOKS *v.* REGIONAL TRANSPORTATION DISTRICT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 906.

No. 06–8340. MAGLIO *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 918 So. 2d 369.

No. 06–8342. SMITH *v.* FICCO. C. A. 1st Cir. Certiorari denied.

No. 06–8343. JACKSON *v.* GRIMES ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–8349. BASKETT *v.* BOVENKAMP. C. A. 9th Cir. Certiorari denied.

No. 06–8352. LUNINI *v.* GRAYEB ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 559.

No. 06–8353. LESTER *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 06–8355. ALEMAN *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 06–8361. HAGGERTY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 06–8363. HOWARD *v.* MCLEMORE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 441.

No. 06–8365. GILL *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 363 Ill. App. 3d 1221, — N. E. 2d —.

No. 06–8366. HAYES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–8370. HIRT *v.* MONTANA DEPARTMENT OF LABOR AND INDUSTRY ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 333 Mont. 553, 143 P. 3d 705.

No. 06–8371. HARRIS *v.* JACKSON, WARDEN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 06–8375. SANCHEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–8376. STOKER *v.* WATSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 496.

No. 06–8382. GARCIA REYES *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 483.

No. 06–8384. NOLAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 06–8385. PARKER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–8389. AZUAKOEMU *v.* GONZALES, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 195 Fed. Appx. 47.

No. 06–8390. BURGIN *v.* LUND, SUPERINTENDENT, CLARINDA CORRECTIONAL FACILITY. C. A. 8th Cir. Certiorari denied.

No. 06–8393. JUNIORS *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 918 So. 2d 1137.

No. 06–8396. ABULKHAIR *v.* BANKS. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–8397. ABULKHAIR *v.* LIBERTY MUTUAL INSURANCE CO. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–8401. BADEAUX *v.* LEBLANC, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–8402. BURNSED *v.* WARD, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–8404. SIEGEL *v.* GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT OF NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 06–8406. REYNOLDS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 844 N. E. 2d 228.

No. 06–8407. PALMER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–8408. MORRISON *v.* ROMANOWSKI, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8409. LINN *v.* KIOWA COUNTY DISTRICT COURT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 790.

No. 06–8412. SMITH *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 447 Mass. 1103, 848 N. E. 2d 1212.

No. 06–8413. SHARIAT *v.* ORANGE COUNTY, CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 06–8414. BALDWIN *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8415. BUTLER *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 06–8419. SHELTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 219.

No. 06–8421. RANDANT *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 341 Ore. 64, 136 P. 3d 1113.

No. 06–8422. KOPP *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 33 App. Div. 3d 153, 817 N. Y. S. 2d 806.

No. 06–8426. NEUMAN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8428. GUTIERREZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 196.

No. 06–8434. THOMAS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 364 Ill. App. 3d 1051, —— N. E. 2d ——.

No. 06–8437. HEETER *v.* SUPERIOR COURT OF CALIFORNIA, GLENN COUNTY. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–8442. BASEER *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 439.

No. 06–8444. BASKETT *v.* WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–8446. PISA *v.* BLANKS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 586.

No. 06–8447. PARACHA *v.* GATES, SECRETARY OF DEFENSE, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 06–8450. MONIQUE J. *v.* CHILDREN'S AID SOCIETY ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 29 App. Div. 3d 467, 817 N. Y. S. 2d 6.

No. 06–8457. GILLARD *v.* SOUTHERN NEW ENGLAND SCHOOL OF LAW. C. A. 1st Cir. Certiorari denied.

No. 06–8458. FOX *v.* YUKINS, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–8459. NICKERSON *v.* PRICE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–8461. ARNETT *v.* ANTRIM, COMMISSIONER, ALASKA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 06–8462. ALICEA *v.* MCCULLOUGH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–8465. ZOCARAS, AKA VASQUEZ *v.* CASTRO ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 465 F. 3d 479.

No. 06–8466. PAIGE *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8467. HARRIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–8473. HOLT *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 332 Mont. 426, 139 P. 3d 819.

No. 06–8477. GRAY *v.* MICHIGAN. Cir. Ct. Kent County, Mich. Certiorari denied.

No. 06–8484. BOOKER *v.* HENRICKS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 06–8486. SNELLING *v.* WPC CORP. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 196 S. W. 3d 593.

No. 06–8487. SELLS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 463 F. 3d 1148.

No. 06–8488. RHODES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 567.

No. 06–8492. CLEM *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–8494. TURNER *v.* FEDERAL AVIATION ADMINISTRATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 169 Fed. Appx. 641.

No. 06–8499. BLANCHETTE *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 35 Kan. App. 2d 686, 134 P. 3d 19.

No. 06–8502. CERRITOS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–8503. RASCON DELACRUZ, AKA RODRIGUE DELACRUZ, AKA RODRIGUEZ, AKA SMITH SAMBRANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 879.

No. 06–8505. ESCAMILLA-VASQUEZ, AKA ESTRADA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 181.

No. 06–8506. TENSLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 876.

No. 06–8510. WILLIAMS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 551.

No. 06–8511. THOMPSON *v.* BATTAGLIA, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 3d 614.

No. 06–8515. BROWN *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 234.

No. 06–8517. EVANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 220.

No. 06–8518. CARILLO-COLLAZO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 494.

No. 06–8519. COOPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 155.

No. 06–8520. RAMIREZ-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 609.

No. 06–8521. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 448.

No. 06–8522. SHERROD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 445 F. 3d 980.

No. 06–8523. MURILLO RODRIGUEZ, AKA MURILLO-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 40.

No. 06–8525. SANDOZ *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 83, 178 P. 3d 800.

No. 06–8528. AGUILAR-HERRERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 540.

No. 06–8530. BEST *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 Fed. Appx. 755.

No. 06–8533. DITTON *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 333 Mont. 483, 144 P. 3d 783.

No. 06–8535. ECKHARDT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 466 F. 3d 938.

No. 06–8536. CROOKS ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 453 F. 3d 653.

No. 06–8537. VERA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 457 F. 3d 831.

No. 06–8539. YOUNG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 458 F. 3d 998.

No. 06–8542. RUSSI-OBANDO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 201 Fed. Appx. 811.

No. 06–8543. WINSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 613.

No. 06–8545. TRAN *v.* PALAKOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD. C. A. 3d Cir. Certiorari denied.

No. 06–8549. ALEXANDER ET UX. *v.* NORTH DAKOTA BOARD OF UNIVERSITY AND SCHOOL LANDS. Sup. Ct. N. D. Certiorari denied. Reported below: 718 N. W. 2d 2.

No. 06–8550. YOUNG *v.* RICHARDS, SUPERINTENDENT, SPECIAL COMMITMENT CENTER AT STEILACOOM, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–8554. MANNA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 146.

No. 06–8561. BACA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–8562. ALLEN *v.* GOLD COUNTY CASINO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 464 F. 3d 1044.

No. 06–8563. BURDEN *v.* WOOD. C. A. 10th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 806.

No. 06–8567. XIANGYUAN ZHU *v.* GONZALES, ATTORNEY GENERAL. C. A. D. C. Cir. Certiorari denied.

No. 06–8568. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 455 F. 3d 134.

No. 06–8569. MARTINEZ-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 562.

No. 06–8570. LUMSDEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–8572. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 915.

No. 06–8573. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 923.

No. 06–8574. LOVE *v.* BEZY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–8579. O'KEEFE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 461 F. 3d 1338.

No. 06–8581. MICKLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 464 F. 3d 804.

No. 06–8582. QUESADA-LERMA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 308.

No. 06–8584. COTTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8585. COTTON, AKA WOODARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8586. CARTER, AKA WILKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 939.

No. 06–8588. CRAIG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 459.

No. 06–8590. LIBRETTI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 533.

No. 06–8591. KOKOSKI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 477.

No. 06–8595. PROCTOR *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 06–8596. MEDINA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 346, 143 P. 3d 471.

No. 06–8598. LAWRENCE *v.* WASHINGTON, DIRECTOR, DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 204 Fed. Appx. 27.

No. 06–8601. OAKLEY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 939 So. 2d 1071.

No. 06–8604. BECKETT *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–8606. PURCELL *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 364 Ill. App. 3d 283, 846 N. E. 2d 203.

No. 06–8607. MCGOLDRICK *v.* MCKUNE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 666.

No. 06–8609. PRESLEY *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 662.

No. 06–8610. SWECKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 645.

No. 06–8614. SMALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 867.

No. 06–8616. ROGERS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS-DALLAS DIVISION. C. A. D. C. Cir. Certiorari denied. Reported below: 207 Fed. Appx. 1.

No. 06–8617. ASANO QUENGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–8619. RUSSELL *v.* SUBLETT ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–8620. SALCEDO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–8621. SHERRILL *v.* COMMANDANT, UNITED STATES DISCIPLINARY BARRACKS. C. A. 10th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 667.

No. 06–8622. ROBINSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–8623. SHEPARD *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–8624. RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 457 F. 3d 109.

No. 06–8626. DOBBS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 449 F. 3d 904.

No. 06–8629. MOLETTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 253.

No. 06–8630. WILSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8632. KAHAWAIOLA'A *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 592.

No. 06–8634. MAYS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 466 F. 3d 335.

No. 06–8636. TALEBNEJAD ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 460 F. 3d 563.

No. 06–8637. ZUNIGA-CHAVEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 464 F. 3d 1199.

No. 06–8638. TRUMBAUER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 955.

No. 06–8639. ZANGWILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 888.

No. 06–8641. VAUGHN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8642. MURPHY *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 06–8644. TRINIDAD-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 204 Fed. Appx. 37.

No. 06–8645. YOCUM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 199 Fed. Appx. 171.

No. 06–8647. MEDINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–8648. JOINER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8649. MANDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8654. PANTOJA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8656. SMITH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 909 A. 2d 1009.

No. 06–8657. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 937.

No. 06–8660. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 392.

No. 06–8666. POLANCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 201 Fed. Appx. 898.

No. 06–8668. MORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 294.

No. 06–8669. MUHAMMAD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 882.

No. 06–8670. POLLEY *v.* JETER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 806.

No. 06–8671. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8673. WILLIAMS *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 198 Fed. Appx. 939.

No. 06–8676. SANCHEZ-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 292.

No. 06–8680. STROZIER *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 189 Fed. Appx. 953.

No. 06–8684. COFFMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 945.

No. 06–8689. PIXLEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 902 A. 2d 829.

No. 06–8692. MARTIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 648.

No. 06–8694. PURVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 231.

No. 06–8698. BERRY *v.* FERRELL, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 746.

No. 06–8703. HICKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 27.

No. 06–8705. HUNTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 950.

No. 06–8707. HOLLIDAY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 457 F. 3d 121.

No. 06–8709. HOWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 948.

No. 06–8712. HAMMOND *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 364 Ill. App. 3d 1050, —— N. E. 2d ——.

No. 06–8715. HARPER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 364 Ill. App. 3d 1050, —— N. E. 2d ——.

No. 06–8719. DAVID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–8720. CABALLERO-ROBLES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 783.

No. 06–8723. CHOUDHRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 461 F. 3d 1097.

No. 06–8724. DREW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 49.

No. 06–8725. FLOYD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 458 F. 3d 844.

No. 06–8727. OLIVAS-PENA, AKA CASTANON-MACIEL, AKA PENA-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 656.

No. 06–8729. PROVENCIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 41.

No. 06–8730. MONTANO-PONCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 29.

No. 06–8732. JIMENEZ-FLORES *v.* UNITED STATES (Reported below: 202 Fed. Appx. 45); MEDELLIN-GARCIA *v.* UNITED STATES (202 Fed. Appx. 35); and RAMIREZ-MORA *v.* UNITED STATES (202 Fed. Appx. 33). C. A. 5th Cir. Certiorari denied.

No. 06–8733. LAINEZ-FLORES *v.* UNITED STATES (Reported below: 202 Fed. Appx. 13); MADRID-MARQUEZ *v.* UNITED STATES (202 Fed. Appx. 36); RIVERA-PASCUAL, AKA PASCUAL-RIVERA, AKA SILVA, AKA MEJIA, AKA RIVERA *v.* UNITED STATES (202 Fed. Appx. 39); ROSALES-CAMPOS, AKA ROSALES *v.* UNITED STATES (202 Fed. Appx. 20); SALINAS-CAMILO, AKA CAMILO-SALINAS *v.* UNITED STATES (202 Fed. Appx. 42); SANDOVAL-RESENDIZ, AKA SANDOVAL-RESENDEZ *v.* UNITED STATES (202 Fed. Appx. 47); VASQUEZ-SANCHEZ, AKA VASQUEZ-CUEVAS, AKA ESPARZA-GARCIA *v.* UNITED STATES (202 Fed. Appx. 52); MENA-SEGOVIANO, AKA PEREZ *v.* UNITED STATES (201 Fed. Appx. 268); and RODRIGUEZ-ESTRADA *v.* UNITED STATES (202 Fed. Appx. 40). C. A. 5th Cir. Certiorari denied.

No. 06–8734. KINGSLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 431.

No. 06–8736. REESE-THOMAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 202 Fed. Appx. 531.

No. 06–8740. COPLIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 463 F. 3d 96.

No. 06–8743. RICE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 37.

No. 06–8744. ROMERO *v.* UNITED STATES; and
No. 06–8756. SANTIAGO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 452 F. 3d 610.

No. 06–8745. SERRANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 906.

No. 06–8749. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 785.

No. 06–8751. AVILA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 31.

No. 06–8752. ABDUSH-SHAKUR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 465 F. 3d 458.

No. 06–8757. PEARSON *v.* LEE ET AL. C. A. 4th Cir. Certiorari denied.

No. 06–8760. PEOPLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–8761. STUBBS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–8766. BLOM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 201 Fed. Appx. 899.

No. 06–8770. NEVELS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 365 Ill. App. 3d 1102, —— N. E. 2d ——.

No. 06–8771. MOSLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 465 F. 3d 412.

No. 06–8772. CHANEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 259.

No. 06–8773. CANADY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 234.

No. 06–8775. NEARY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 199 Fed. Appx. 110.

No. 06–8777. ERBO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 467 F. 3d 227.

No. 06–8782. ROMERO-FLORES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 744.

No. 06–8790. JIMINEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–8794. SUGGS *v.* O'BRIEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8796. SIMMONDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–8801. ARNOLD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 430.

No. 06–8803. CARRILLO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8804. XIANGYUAN ZHU *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 198 Fed. Appx. 6.

No. 06–8811. RAMIREZ-SANCHEZ, aka SANCHEZ-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 399.

No. 06–8815. BERGMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 06–8823. RODRIGUEZ-CAMARGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 729.

No. 06–8824. RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 667.

No. 06–8825. RODRIGUEZ-SANCHEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 198 Fed. Appx. 191.

No. 06–8831. OLIVIERI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–8837. BRADSHAW *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–8843. BALLESTERO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 512.

No. 06–8844. ESPINAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–8847. ELLIS, aka MORGAN, aka COKE, aka COX *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 201 Fed. Appx. 39.

No. 06–8853. PROVENCIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 650.

No. 06–8855. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 455 F. 3d 602.

No. 06–8856. SALAZAR-ESTRADA, aka MORALES, aka CARRION, aka ROLDAN, aka VEGA-ENCINO *v.* UNITED STATES (Reported below: 205 Fed. Appx. 261); ALVAREZ-LOPEZ *v.* UNITED

STATES (207 Fed. Appx. 503); BENAVIDEZ-GONZALEZ *v.* UNITED STATES (202 Fed. Appx. 718); TORRENTES-TELLERIA *v.* UNITED STATES (205 Fed. Appx. 275); GUTIERREZ-CHAVEZ *v.* UNITED STATES (208 Fed. Appx. 312); PERALTA-MORALES *v.* UNITED STATES (208 Fed. Appx. 310); SANCHEZ-HERNANDEZ *v.* UNITED STATES (208 Fed. Appx. 309); and ALONSO-MARTINEZ *v.* UNITED STATES (208 Fed. Appx. 308). C. A. 5th Cir. Certiorari denied.

No. 06–8857. RODRIGUEZ-DELMA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 456 F. 3d 1246.

No. 06–8858. RODRIGUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 773.

No. 06–8860. ALEXANDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 151.

No. 06–8863. LONG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 464 F. 3d 569.

No. 06–8866. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 205 Fed. Appx. 41.

No. 06–8870. AREVALO *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 3d 436.

No. 06–8874. WATSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–8878. MORA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8879. YOUNG *v.* PIERCE, WARDEN (two judgments). C. A. 7th Cir. Certiorari denied.

No. 06–8880. CARLISLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 716.

No. 06–8881. DEMEULENAERE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 685.

No. 06–8884. EATMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 420.

No. 06–8885. STEVENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–8888. WUSEBIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 201 Fed. Appx. 35.

No. 06–8889. TAYLOR *v.* GARDNER, JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, ET AL. Ct. App. D. C. Certiorari denied.

No. 06–8891. RAYON-SANTIAGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 928.

No. 06–8897. BLATT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–8899. ALBERT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–8908. SOUTHERLAND *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 466 F. 3d 1083.

No. 06–8909. TACKETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8912. MORERA-VIGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–8914. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 771.

No. 06–8915. MURGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 898.

No. 06–8916. PENALOZA-ZARATE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 898.

No. 06–8918. POLLARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8920. PHILIPS, AKA HENLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 101.

No. 06–8921. MUNGUIA-LUCATERO *v.* UNITED STATES (Reported below: 202 Fed. Appx. 953); and COYT *v.* UNITED STATES (180 Fed. Appx. 765). C. A. 9th Cir. Certiorari denied.

No. 06–8923. RIOS-GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 793.

No. 06–8931. PETTIGREW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 468 F. 3d 626.

No. 06–8932. MINTEER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 168 Fed. Appx. 790.

No. 06–8935. EL AMIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 200 Fed. Appx. 75.

No. 06–8943. BURGESS *v.* WATTERS. C. A. 7th Cir. Certiorari denied. Reported below: 467 F. 3d 676.

No. 06–8944. AMOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–8945. PERKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 799.

No. 06–8946. PALMER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 332.

No. 06–8947. NNAJI ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–8950. CANADY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 172.

No. 06–8951. CARRILLO-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 114.

No. 06–8952. CORREA, AKA ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 857.

No. 06–8953. DOCKERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 317.

No. 06–8957. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 630.

No. 06–8958. ANGULO-PALACIOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–8959. VANDYKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–8960. WICKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 695.

No. 06–8961. VELAZQUEZ-ALCARAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 969.

No. 06–8962. SANDOVAL ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 380.

No. 06–8963. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 355.

No. 06–8964. LEAL-RIVERA *v.* UNITED STATES (Reported below: 203 Fed. Appx. 637); and RIOS-CRUZ *v.* UNITED STATES (205 Fed. Appx. 274). C. A. 5th Cir. Certiorari denied.

No. 06–8967. PRICE *v.* OUTLAW, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 442.

No. 06–8971. CASTELO-VALENCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 120.

No. 06–8975. LOPEZ-ESTRADA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 371.

No. 06–8980. ADKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 472.

No. 06–8984. WADDELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 193.

No. 06–8985. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–8986. WALLETTE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–8993. SAID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 239.

No. 06–8994. RODRIGUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 723.

No. 06–8996. SEARS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 800.

No. 06–8998. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 267.

No. 06–9015. EVANS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–9016. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 952.

No. 06–9017. HARRINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 784.

No. 06–9020. GARCIA-CORTEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 617.

No. 06–9021. HESTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 502.

No. 06–9022. HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 965.

No. 06–9024. GUTIERREZ-MIRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 943.

No. 06–9025. HILL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 783.

No. 06–9029. GRABLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 670.

No. 06–9030. FLORES-GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 34.

No. 06–9031. HERNANDEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 467 F. 3d 492.

No. 06–9032. HILEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 403.

No. 06–9033. HOFMANN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–9037. BERNARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 790.

No. 06–9040. ESPINOZA-CAPUCHINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 840.

No. 06–9041. COFFINDAFFER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 887.

No. 06–9045. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 194.

No. 06–9050. VILLEGAS-HERNANDEZ *v.* UNITED STATES (Reported below: 468 F. 3d 874); LOPEZ-LUNA, AKA LUNA-LOPEZ *v.* UNITED STATES (205 Fed. Appx. 263); GUADALUPE PENA *v.* UNITED STATES (205 Fed. Appx. 263); RANGEL-PUENTE *v.* UNITED STATES (205 Fed. Appx. 267); and RAMOS-VILLALOBOS *v.* UNITED STATES (205 Fed. Appx. 278). C. A. 5th Cir. Certiorari denied.

No. 06–9055. THOMPSON *v.* REVELL, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–9058. TURNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 877.

No. 05–1536. FRANK, WARDEN, ET AL. *v.* KAUA. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 436 F. 3d 1057.

No. 06–439. SUMMERS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. *v.* STATE STREET BANK & TRUST CO.; and

No. 06–602. STATE STREET BANK & TRUST CO. *v.* SUMMERS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 453 F. 3d 404.

No. 06–534. INITIATIVE AND REFERENDUM INSTITUTE ET AL. *v.* HERBERT, LIEUTENANT GOVERNOR OF UTAH, ET AL. C. A. 10th Cir. Motion of Western Wildlife Conservancy et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 450 F. 3d 1082.

No. 06–592. KONTEH *v.* BELL. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 450 F. 3d 651.

No. 06–623. MISISCHIA *v.* ST. JOHN'S MERCY HEALTH SYSTEMS ET AL. C. A. 8th Cir. Motion of Association of American Physicians and Surgeons for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 457 F. 3d 800.

No. 06–744. STACEY, INDIVIDUALLY AND AS CO-EXECUTOR OF THE LAST WILL OF STACEY *v.* CITY OF HERMITAGE, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 178 Fed. Appx. 94.

No. 06–843. MORRISON *v.* MADISON DEARBORN CAPITAL PARTNERS III L. P. ET AL. C. A. 3d Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 463 F. 3d 312.

No. 06–844. MILLER, COMMISSIONER, PENNSYLVANIA STATE POLICE *v.* CONCHATTA, INC., DBA CLUB RISQUE ON THE DELAWARE, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 458 F. 3d 258.

No. 06–7611. J. B. *v.* OHIO. Ct. App. Ohio, Butler County. Motion of Juvenile Law Center for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 06–8276. SPURLOCK *v.* BANK OF AMERICA ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 188 Fed. Appx. 171.

No. 06–8287. KIKUMURA *v.* HOOD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 467 F. 3d 1257.

No. 06–8483. BRITTON *v.* AIMCO SANDALWOOD L. P. Ct. App. Tex., 14th Dist. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 06–9046. CARSON ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 455 F. 3d 336.

Rehearing Denied

No. 05–6764. ALLEN *v.* UNITED STATES, *ante*, p. 1095;
No. 05–11082. BAKER *v.* REXROAD ET AL., *ante*, p. 840;

No. 06–122. SAMADI *v.* MBNA AMERICA BANK, N. A., *ante*, p. 993;

No. 06–139. SHAKIR *v.* PRAIRIE VIEW A&M UNIVERSITY ET AL., *ante*, p. 1077;

No. 06–155. SCHIANO ET VIR *v.* MBNA CORP. ET AL., *ante*, p. 1019;

No. 06–329. DUFF ET VIR *v.* LEWIS ET AL., *ante*, p. 1095;

No. 06–379. WAGNER *v.* BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE ET AL., *ante*, p. 1052;

No. 06–395. GROSS *v.* IRTZ, ADMINISTRATOR OF GROSS, *ante*, p. 1052;

No. 06–471. PERSIK *v.* SUTHERS, ATTORNEY GENERAL OF COLORADO, ET AL., *ante*, p. 1077;

No. 06–476. BROGDON *v.* MCMASTER, ATTORNEY GENERAL OF SOUTH CAROLINA, *ante*, p. 1054;

No. 06–488. MICKENS ET UX. *v.* STEWART TITLE GUARANTY CO. ET AL., *ante*, p. 1096;

No. 06–495. ERICKSON *v.* WASHINGTON DEPARTMENT OF NATURAL RESOURCES, *ante*, p. 1054;

No. 06–515. M2 SOFTWARE, INC. *v.* M2 COMMUNICATIONS, INC., *ante*, p. 1096;

No. 06–540. TROJANEK *v.* SAFEWAY, INC., ET AL., *ante*, p. 1112;

No. 06–552. PUNCHARD *v.* BUREAU OF LAND MANAGEMENT ET AL., *ante*, p. 1078;

No. 06–565. IN RE JOHNSON, *ante*, p. 1050;

No. 06–569. LOVE *v.* DEPARTMENT OF JUSTICE, *ante*, p. 1078;

No. 06–5647. IN RE SAMUELS, *ante*, p. 951;

No. 06–5739. MCCANEY *v.* UNITED STATES, *ante*, p. 1097;

No. 06–5758. MANN *v.* UNITED STATES, *ante*, p. 1056;

No. 06–5959. NARVEZ MARTINEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 979;

No. 06–6135. MOSES *v.* UNITED STATES, *ante*, p. 940;

No. 06–6250. VEGA *v.* KLEM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL., *ante*, p. 980;

No. 06–6269. IN RE HILL, *ante*, p. 1018;

No. 06–6401. PINCKNEY *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1022;

No. 06–6438. ZENDRAN *v.* PROVIDENCE POLICE DEPARTMENT, *ante*, p. 1079;

No. 06–6447. LEVERTON *v.* POPE ET AL., *ante*, p. 1035;

No. 06–6459. HARRIS *v.* GLADES CORRECTIONAL INSTITUTION, *ante*, p. 1036;

No. 06–6573. LINDSEY *v.* MISSISSIPPI, *ante*, p. 1097;

No. 06–6624. ABNEY *v.* DiGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, *ante*, p. 1038;

No. 06–6644. ANDREWS *v.* MOORE ET AL., *ante*, p. 1059;

No. 06–6645. BENJAMIN *v.* EAGLETON, WARDEN, ET AL., *ante*, p. 1059;

No. 06–6819. CARTER *v.* RANDOLPH COUNTY JAIL, *ante*, p. 1062;

No. 06–6856. YOUNG *v.* UNITED STATES, *ante*, p. 1080;

No. 06–6871. COUSIN *v.* KROGER CO., *ante*, p. 1080;

No. 06–6909. JEFFERSON *v.* WARDEN OF WEST CARROLL DETENTION CENTER, *ante*, p. 1080;

No. 06–7010. CAMPBELL *v.* POLK, WARDEN, *ante*, p. 1098;

No. 06–7054. McCASLIN *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 1083;

No. 06–7117. MEHRA *v.* LEWINSON, *ante*, p. 1098;

No. 06–7137. FREEMAN *v.* UNITED STATES, *ante*, p. 1042;

No. 06–7205. SIMMONDS *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, *ante*, p. 1098;

No. 06–7258. BLACKMER *v.* CATTELL, WARDEN, *ante*, p. 1083;

No. 06–7282. PENA *v.* UNITED STATES, *ante*, p. 1065;

No. 06–7293. BOWEN *v.* CITY OF LOS ANGELES, CALIFORNIA, *ante*, p. 1083;

No. 06–7295. IN RE McGEE, *ante*, p. 1051;

No. 06–7321. DAY *v.* UNITED STATES, *ante*, p. 1066;

No. 06–7357. BROWN *v.* UNITED STATES, *ante*, p. 1067;

No. 06–7398. COBB *v.* UNITED STATES, *ante*, p. 1068;

No. 06–7481. LEON *v.* UNITED STATES, *ante*, p. 1070;

No. 06–7563. BELL *v.* UNITED STATES, *ante*, p. 1087;

No. 06–7680. IN RE DuMONDE, *ante*, p. 1076;

No. 06–8143. EVANS *v.* UNITED STATES, *ante*, p. 1150; and

No. 06–8164. DUNCAN *v.* UNITED STATES, *ante*, p. 1151. Petitions for rehearing denied.

No. 06–636. GOODMAN *v.* UNITED STATES, *ante*, p. 1097; and

No. 06–5295. IN RE GREEN ET AL., *ante*, p. 809. Motions for leave to file petitions for rehearing denied.

FEBRUARY 22, 2007

Dismissals Under Rule 46

No. 06–588. CROSBY *v.* VALDES, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF VALDES. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 450 F. 3d 1231.

No. 06–960. HALE ET AL. *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 461 F. 3d 1092.

Miscellaneous Order

No. 06A797. AL SANANI *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. D. C. D. C. Application for injunction requiring the production of a factual return, pursuant to 28 U. S. C. § 2243, pending the filing and disposition of a petition for writ of certiorari, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

Certiorari Denied

No. 06–8691 (06A693). ANDERSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 204 Fed. Appx. 402.

FEBRUARY 26, 2007

Certiorari Granted—Vacated and Remanded

No. 05–1670. EXXON MOBIL CORP. *v.* GREFER ET AL. Ct. App. La., 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Philip Morris USA* v. *Williams*, *ante*, p. 346. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 901 So. 2d 1117.

No. 06–8527. AZAM *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case

remanded for further consideration in light of *Cunningham* v. *California*, *ante*, p. 270.

Certiorari Dismissed

No. 06–8547. WOODBERRY *v.* BRUCE, WARDEN, ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 203 Fed. Appx. 186.

Miscellaneous Orders

No. 06M66. WARE *v.* DEPARTMENT OF THE INTERIOR ET AL.;
No. 06M67. M. S. *v.* I. P.;
No. 06M68. YUN *v.* GONZALES, ATTORNEY GENERAL; and
No. 06M69. MARTINEZ *v.* SCRIBNER, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06–413. UTTECHT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY *v.* BROWN. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1162.] Motion of respondent for appointment of counsel granted. Suzanne L. Elliott, Esq., of Seattle, Wash., is appointed to serve as counsel for respondent in this case.

No. 06–856. LARUE *v.* DEWOLFF, BOBERG & ASSOCIATES, INC., ET AL. C. A. 4th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 06–6407. PANETTI *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1106.] Motion of petitioner for appointment of counsel granted. Keith S. Hampton, Esq., of Austin, Tex., is appointed to serve as counsel for petitioner in this case.

No. 06–8512. IN RE ANDREWS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1179] denied.

No. 06–9169. IN RE PRIVETT;
No. 06–9192. IN RE JACKSON;
No. 06–9251. IN RE FUSELIER;
No. 06–9284. IN RE PADGETT; and
No. 06–9302. IN RE TUBBS. Petitions for writs of habeas corpus denied.

No. 06–9105. IN RE ADDAMS-MORE. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 06–571. WATSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 191 Fed. Appx. 326.

No. 06–637. BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK *v.* TOM F., ON BEHALF OF GILBERT F., A MINOR CHILD. C. A. 2d Cir. Certiorari granted. Reported below: 193 Fed. Appx. 26.

No. 06–713. WASHINGTON STATE GRANGE *v.* WASHINGTON STATE REPUBLICAN PARTY ET AL.; and
No. 06–730. WASHINGTON ET AL. *v.* WASHINGTON STATE REPUBLICAN PARTY ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 460 F. 3d 1108.

Certiorari Denied

No. 05–1026. HOGNER *v.* STRENKE ET AL. Ct. App. Wis. Certiorari denied. Reported below: 287 Wis. 2d 135, 704 N. W. 2d 309.

No. 05–1593. ATES *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–9578. FOSTER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–10067. ALVIDREZ *v.* MCKUNE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 755.

No. 05–10094. WAKEFIELD *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–10561. PASTERNACK *v.* SALEH ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 875 A. 2d 400.

No. 06–349. BERGER *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 212 Ariz. 473, 134 P. 3d 378.

No. 06–464. OHIO *v.* FARRIS. Sup. Ct. Ohio. Certiorari denied. Reported below: 109 Ohio St. 3d 519, 849 N. E. 2d 985.

No. 06–481. LAWS *v.* SONY MUSIC ENTERTAINMENT, INC., DBA EPIC RECORDS. C. A. 9th Cir. Certiorari denied. Reported below: 448 F. 3d 1134.

No. 06–535. HOLM *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 137 P. 3d 726.

No. 06–603. IRVING N. ET AL. *v.* RHODE ISLAND DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES. Sup. Ct. R. I. Certiorari denied. Reported below: 900 A. 2d 1202.

No. 06–638. HAYNES *v.* LEVEL 3 COMMUNICATIONS, LLC. C. A. 10th Cir. Certiorari denied. Reported below: 456 F. 3d 1215.

No. 06–722. FUJI KOGYO CO., LTD. *v.* PACIFIC BAY INTERNATIONAL, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 461 F. 3d 675.

No. 06–729. CITY OF NEW YORK, NEW YORK, ET AL. *v.* CATSKILL MOUNTAINS CHAPTER OF TROUT UNLIMITED, LTD., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 451 F. 3d 77.

No. 06–828. HENDERSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 3d 654.

No. 06–859. RAISER *v.* CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 810.

No. 06–861. SHURTLEFF, PERSONAL REPRESENTATIVE OF THE ESTATE OF SHURTLEFF, DECEASED, AND ASSIGNEE OF THE ESTATE OF JUNE, DECEASED *v.* GREAT AMERICAN INSURANCE CO. ET AL. Ct. App. Iowa. Certiorari denied. Reported below: 723 N. W. 2d 449.

No. 06–870. CROWN PAPER LIQUIDATING TRUST *v.* PRICEWATERHOUSECOOPERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 597.

No. 06–871. CORTEZ *v.* AIR NEW ZEALAND LTD. (USA). C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 31.

No. 06–875. RODRIGUEZ *v.* PEREIRA ET AL. Sup. Ct. Va. Certiorari denied.

No. 06–876. TEXAS *v.* SPRINGSTEEN. Ct. Crim. App. Tex. Certiorari denied.

No. 06–878. BROOKS, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF BROOKS, DECEASED *v.* ARMCO, INC. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 194 S. W. 3d 661.

No. 06–880. RDC GOLF OF FLORIDA I, INC. *v.* APOSTOLICAS. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 925 So. 2d 1082.

No. 06–881. RISER *v.* TARGET CORP. C. A. 8th Cir. Certiorari denied. Reported below: 458 F. 3d 817.

No. 06–915. MCDONALD ET UX. *v.* HSBC FINANCIAL CORP. ET AL. C. A. 7th Cir. Certiorari denied.

No. 06–917. EDWARDS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 844.

No. 06–924. NEWMAN *v.* ORANGE COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 3d 991.

No. 06–946. MCKISSIC *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 463.

No. 06–951. RAAD *v.* FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 396.

No. 06–958. HAYES *v.* THOMAS & BETTS CORP. Ct. App. La., 5th Cir. Certiorari denied.

No. 06–978. WALTON *v.* GUIDANT SALES CORP. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 510.

No. 06–986. JENSEN *v.* CITY OF FIRCREST, WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 158 Wash. 2d 384, 143 P. 3d 776.

No. 06–1013. COLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–1018. ROGALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–5340. LERMA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–5686. BISMARK *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 171 Fed. Appx. 278.

No. 06–6635. KENDALL *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 849 N. E. 2d 1109.

No. 06–7013. THOMPSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 222 Ill. 2d 1, 853 N. E. 2d 378.

No. 06–7234. GIBSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–7589. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 455.

No. 06–7775. BUCHHEIT *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 459 F. 3d 849.

No. 06–7954. CLARK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 3d 441.

No. 06–8012. WEESE *v.* UNITED STATES (Reported below: 199 Fed. Appx. 394); SAVALA *v.* UNITED STATES (196 Fed. Appx. 296);

and CHATMON *v.* UNITED STATES (206 Fed. Appx. 350). C. A. 5th Cir. Certiorari denied.

No. 06–8236. HURT *v.* OSBORNE. Ct. App. D. C. Certiorari denied.

No. 06–8490. CRAIG *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 110 Ohio St. 3d 306, 853 N. E. 2d 621.

No. 06–8493. DRAKE *v.* BAILEY ET AL. Ct. App. Kan. Certiorari denied. Reported below: 35 Kan. App. 2d x, 135 P. 3d 774.

No. 06–8516. WALLACE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–8524. ROBINSON *v.* CORNYN, UNITED STATES SENATOR, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 314.

No. 06–8526. BECKHAM *v.* MOORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8532. DESILVA *v.* INDUSTRIAL COMMISSION OF ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 06–8534. EDWARDS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 200 S. W. 3d 500.

No. 06–8540. TATE *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–8541. STEVENS *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 187 Fed. Appx. 205.

No. 06–8544. SEBASTIAN T. *v.* LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–8548. BROOM *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 441 F. 3d 392.

No. 06–8551. CASEY-BEICH *v.* BACKMAN. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 06–8555. WEBSTER *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 703.

No. 06–8558. WOLDE-GIORGIS *v.* WILLS ET AL. Ct. App. Ariz. Certiorari denied.

No. 06–8559. VILLANUEVA *v.* KRAMER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 669.

No. 06–8560. WALKER *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 364 Ill. App. 3d 1065, — N. E. 2d —.

No. 06–8564. BRUMFIELD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–8565. BERRYHILL *v.* EVANS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 466 F. 3d 934.

No. 06–8566. BARNES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8577. LAGROU *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8618. ROSEBOROUGH *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 06–8627. MILES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 163.

No. 06–8658. EDWARDS *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8672. SAMPSON *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1236, — N. E. 2d —.

No. 06–8685. COOK *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 06–8687. ANASOH *v.* CALHOUN. Ct. Sp. App. Md. Certiorari denied.

No. 06–8718. HEBERT *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 320.

No. 06–8722. CALVERT *v.* PAYNE, SUPERINTENDENT, MCNEIL ISLAND CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 75.

No. 06–8762. SCIBLE *v.* HAINES, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 957.

No. 06–8774. WIGHTMAN-CERVANTES *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 06–8798. ARROYO *v.* BRADY, SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied.

No. 06–8816. WHELAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 681.

No. 06–8829. LOPEZ *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 196 S. W. 3d 872.

No. 06–8840. SIMPSON *v.* HOLDER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 836.

No. 06–8848. LYNN *v.* BLIDEN. C. A. 2d Cir. Certiorari denied. Reported below: 443 F. 3d 238.

No. 06–8873. BOWE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 871.

No. 06–8991. ROBINSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 361 N. C. 225, 641 S. E. 2d 808.

No. 06–8995. TRAPP *v.* UNITED STATES MARSHALS SERVICE ET AL. C. A. 10th Cir. Certiorari denied.

No. 06–9003. BUTLER *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 655.

No. 06–9008. BOYD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–9014. DOMINGUES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9027. PIZZICHIELLO *v.* DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 907.

No. 06–9038. BRATCHER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9054. REVUELTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 730.

No. 06–9065. KEITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 235.

No. 06–9071. ODMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 247.

No. 06–9075. CHAPLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9076. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 457 F. 3d 817.

No. 06–9077. VAZQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 548.

No. 06–9078. MARKHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 255.

No. 06–9087. CATON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 213.

No. 06–9088. LYNCH *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–9091. JUNIOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9093. DUARTE-BENITEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9094. CROSSLAND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–9095. EADS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 709.

No. 06–9096. CHIRONNO *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 198 Fed. Appx. 959.

No. 06–9098. PAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 468 F. 3d 771.

No. 06–9099. LINZIE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9100. MARANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 485.

No. 06–9101. LAKOSKEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 965.

No. 06–9103. SONNIER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 624.

No. 06–9115. MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 618.

No. 06–9116. MONTGOMERY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 468 F. 3d 715.

No. 06–9118. WATKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9119. JARVIE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9120. KELLOGG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 96.

No. 06–9123. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 220.

No. 06–9133. RODRIGO-ABAD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–9135. BROOM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 565.

No. 06–9138. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 604.

No. 06–9141. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 716.

No. 06–9145. MOORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9151. LEWIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–9153. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9157. REEVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9158. PEREZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 489.

No. 06–9159. TUCKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 195.

No. 06–9160. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9163. SCOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9164. REYES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 194 Fed. Appx. 69.

No. 06–9165. WALLACE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–710. BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* MICHAEL. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this motion and this petition. Reported below: 459 F. 3d 411.

No. 06–857. BLACKWATER SECURITY CONSULTING, LLC, ET AL. *v.* NORDAN ET AL. C. A. 4th Cir. Motion of American International Group, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 460 F. 3d 576.

No. 06–873. MOHAWK INDUSTRIES, INC. *v.* WILLIAMS ET AL. C. A. 11th Cir. Motion of petitioner to strike respondents' supplemental brief denied as moot. Certiorari denied. Reported below: 465 F. 3d 1277.

No. 06–8489. SHADE *v.* CITIBANK (SOUTH DAKOTA), N. A. Ct. App. Cal., 3d App. Dist. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

Rehearing Denied

No. 04–1324. DAY *v.* MCDONOUGH, INTERIM SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 547 U. S. 198;

No. 05–9222. BURTON *v.* STEWART, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER, *ante*, p. 147;

No. 06–224. DAVIS *v.* STRAUB, WARDEN, *ante*, p. 1110;

No. 06–671. ST. LUKE'S SUBACUTE HOSPITAL & NURSING CENTRE, INC., ET AL. *v.* UNITED STATES, *ante*, p. 1116;

No. 06–712. WYTTENBACH *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 1117;

No. 06–720. RAINEY *v.* KENTUCKY, *ante*, p. 1117;

No. 06–6345. CICCI *v.* ARIZONA, *ante*, p. 1168;

No. 06–7251. JONES *v.* UNITED SPACE ALLIANCE, LLC, *ante*, p. 1083;

No. 06–7391. MOORE *v.* EGAN ET AL., *ante*, p. 1127;

No. 06–7434. EDWARDS *v.* HOFBAUER, WARDEN, *ante*, p. 1128;

No. 06–7484. BISHOP *v.* WESTERN SURETY CO. ET AL., *ante*, p. 1129;

No. 06–7490. CRAIG ET VIR *v.* TUSCARAWAS COUNTY JOB AND FAMILY SERVICES ET AL., *ante*, p. 1129;

No. 06–7542. MUJADZIC *v.* HOTEL GOVERNOR, *ante*, p. 1131;

No. 06–7562. IN RE THOMPSON, *ante*, p. 1109;

No. 06–7569. BROWN *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL., *ante*, p. 1132;

No. 06–7635. CANNON-STOKES *v.* POTTER, POSTMASTER GENERAL, *ante*, p. 1099;

No. 06–7670. BRANHAM *v.* CARUSO, WARDEN, *ante*, p. 1135;

No. 06–7908. WILLIAMS *v.* UNITED STATES, *ante*, p. 1143; and

No. 06–8158. IN RE RAY, *ante*, p. 1109. Petitions for rehearing denied.

MARCH 5, 2007

Certiorari Granted—Vacated and Remanded

No. 05–809. ADAMS, WARDEN *v.* ZAMORA. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case re-

manded for further consideration in light of *Whorton* v. *Bockting*, *ante*, p. 406. Reported below: 150 Fed. Appx. 583.

No. 06–595. HARPER, A MINOR, BY AND THROUGH HIS PARENTS HARPER ET UX., ET AL. *v.* POWAY UNIFIED SCHOOL DISTRICT ET AL. C. A. 9th Cir. Motion of Kelsie J. Harper for leave to intervene denied. Petitioners seek review of the judgment of the United States Court of Appeals for the Ninth Circuit, which affirmed the District Court's denial of petitioners' motion for a preliminary injunction. The District Court, however, has now entered final judgment dismissing petitioners' claims for injunctive relief as moot. We have previously dismissed interlocutory appeals from the denials of motions for temporary injunctions once final judgment has been entered. See *Pacific Telephone & Telegraph Co.* v. *Kuykendall*, 265 U. S. 196, 205–206 (1924); *Shaffer* v. *Carter*, 252 U. S. 37, 44 (1920). In this case, vacatur of the prior judgment is also appropriate to "'clea[r] the path for future relitigation of the issues between the parties and [to] eliminat[e] a judgment, review of which was prevented through happenstance.'" *Anderson* v. *Green*, 513 U. S. 557, 560 (1995) *(per curiam)* (quoting *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 40 (1950); alterations in original). Certiorari granted, judgment vacated, and case remanded with instructions to dismiss the appeal as moot. See *United States* v. *Munsingwear, Inc.*, *supra*. JUSTICE BREYER dissents. Reported below: 445 F. 3d 1166.

No. 06–8851. POTEATE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Cunningham* v. *California*, *ante*, p. 270.

Miscellaneous Orders

No. 06M70. JOHNSON-MELVIN *v.* MELVIN; and

No. 06M71. PIERCE *v.* SOARES, WARDEN, ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06M72. HOLSTON *v.* SUBERS ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 06M73. IN RE ALI. Motion for leave to file petition for writ of habeas corpus under seal granted.

No. 05–1157. CREDIT SUISSE SECURITIES (USA) LLC, FKA CREDIT SUISSE FIRST BOSTON LLC, ET AL. *v.* BILLING ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1092.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of respondent Milton Pfeiffer for divided argument denied. THE CHIEF JUSTICE took no part in the consideration or decision of these motions.

No. 06–278. MORSE ET AL. *v.* FREDERICK. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1075.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–376. HINCK ET UX. *v.* UNITED STATES. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 1162.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 06–480. LEEGIN CREATIVE LEATHER PRODUCTS, INC. *v.* PSKS, INC., DBA KAY'S KLOSET . . . KAY'S SHOES. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1092.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of New York State et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted.

No. 06–1169. HAMDAN *v.* GATES, SECRETARY OF DEFENSE, ET AL.; and KHADR *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Motion of petitioners to expedite consideration of the petition for writ of certiorari denied. JUSTICE SOUTER and JUSTICE BREYER would grant the motion to expedite consideration.

No. 06–5247. FRY *v.* PLILER, WARDEN. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1092.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–5306. BOWLES *v.* RUSSELL, WARDEN. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1092.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–8120. BRENDLIN *v.* CALIFORNIA. Sup. Ct. Cal. [Certiorari granted, *ante*, p. 1177.] Motion of petitioner for appoint-

ment of counsel granted. Elizabeth M. Campbell, Esq., of Sacramento, Cal., is appointed to serve as counsel for petitioner in this case.

No. 06–1007. IN RE TROXLER; and

No. 06–9228. IN RE BERRY. Petitions for writs of mandamus denied.

Certiorari Denied

No. 05–7314. ANDERSON *v.* BOCK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7474. POWELL *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 146.

No. 05–10360. ACKLEY *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 05–11380. STEWARD *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–11552. LAVE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 444 F. 3d 333.

No. 05–11761. EDWARDS *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 129 P. 3d 977.

No. 06–563. BRIGHT, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF BRIGHT, DECEASED *v.* WESTMORELAND COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 443 F. 3d 276.

No. 06–628. DUKES *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 718 N. W. 2d 920.

No. 06–629. DIAZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–747. GILLARD *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 445 F. 3d 883.

No. 06–749. MORRISON ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 178 Fed. Appx. 481.

No. 06–765. NEW MEXICO *v.* ROMERO ET AL. Sup. Ct. N. M. Certiorari denied. Reported below: 140 N. M. 299, 142 P. 3d 887.

No. 06–815. REIFERT *v.* SOUTH CENTRAL WISCONSIN MLS CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 450 F. 3d 312.

No. 06–829. VERGES *v.* VERGES. Sup. Ct. La. Certiorari denied. Reported below: 936 So. 2d 1271.

No. 06–894. WALKER *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 150 Fed. Appx. 28.

No. 06–896. KAU-KAU TAKE HOME NO. 1, INC. *v.* CITY OF WICHITA, KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 281 Kan. 1185, 135 P. 3d 1221.

No. 06–897. JOHNSON *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied. Reported below: 907 A. 2d 800.

No. 06–903. LEE *v.* HAYDASH. Sup. Ct. Va. Certiorari denied.

No. 06–909. SMITH *v.* COCHRAN. C. A. 10th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 854.

No. 06–911. BARNES *v.* JEUDEVINE. Sup. Ct. Mich. Certiorari denied. Reported below: 475 Mich. 696, 718 N. W. 2d 311.

No. 06–921. REYAD *v.* BANK OF NEW YORK. App. Ct. Conn. Certiorari denied. Reported below: 97 Conn. App. 133, 902 A. 2d 1073.

No. 06–928. SERAFINO *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 186 Fed. Appx. 302.

No. 06–953. SMITH *v.* DORSEY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 768.

No. 06–967. LIGHTHOUSE DISASTER RELIEF ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–981. PRENTICE *v.* DALCO ELECTRIC, INC. Sup. Ct. Conn. Certiorari denied. Reported below: 280 Conn. 336, 907 A. 2d 1204.

No. 06–992. STONE ET AL. *v.* JONES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 894.

No. 06–1009. MILES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 204 S. W. 3d 822.

No. 06–1044. FRANCHINI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–1054. WHEELER *v.* MISSOURI DIRECTOR OF REVENUE. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 202 S. W. 3d 624.

No. 06–1067. GADDIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 817.

No. 06–1070. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 435.

No. 06–6718. GORBY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 934 So. 2d 449.

No. 06–6785. BIRTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 1001.

No. 06–6874. CHURCH *v.* MICHIGAN DEPARTMENT OF HUMAN SERVICES. Ct. App. Mich. Certiorari denied.

No. 06–7514. RICO DE MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 710.

No. 06–7895. DAVILA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 461 F. 3d 298.

No. 06–7922. BARRETT *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–8022. NICKERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 325.

No. 06–8099. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 459 F. 3d 990.

No. 06–8104. ESTUPINAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 453 F. 3d 1336.

No. 06–8571. KLECKLEY *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–8576. LAPINE *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8583. EARL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; and ELSE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8587. DEHERRERA *v.* LEMASTER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 570.

No. 06–8589. CLARK *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 939 So. 2d 1067.

No. 06–8592. JONES *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8593. MOSCOSO *v.* AYERS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–8594. MOORE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8597. AL GHASHIYAH *v.* SCHNEITER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–8599. JONES *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–8602. PARADA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 939 So. 2d 1059.

No. 06–8603. BELLAMY *v.* HALLMARK, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR,

ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 808.

No. 06–8608. BEATTIE *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8612. CARR *v.* HAINES, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 205.

No. 06–8613. SMITH *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–8615. SMITH *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–8625. HEALY *v.* SPENCER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied. Reported below: 453 F. 3d 21.

No. 06–8628. MORELAND *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–8635. JOHNSON *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–8640. TAYLOR *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 902 A. 2d 983.

No. 06–8646. SANDOVAL VILLAREAL *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 06–8651. BROWN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–8652. YOUNG *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8653. BOZSIK *v.* HUDSON, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 110 Ohio St. 3d 245, 852 N. E. 2d 1200.

No. 06–8655. TATUM *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 646.

No. 06–8659. EARL *v.* GOULD. C. A. 4th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 226.

No. 06–8665. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–8667. MCGEE ET UX. *v.* SEAGRAVES ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–8677. RICHARD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8695. WILLIAMS *v.* BROWN. C. A. 7th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 663.

No. 06–8697. GOBLE *v.* JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 723.

No. 06–8701. ISAAC *v.* DONALD, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 859.

No. 06–8714. FAGAN *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 280 Conn. 69, 905 A. 2d 1101.

No. 06–8721. DOMINGUEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 39 Cal. 4th 1141, 140 P. 3d 866.

No. 06–8739. EL *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 185.

No. 06–8818. WALKER *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied.

No. 06–8827. STANLEY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 39 Cal. 4th 913, 140 P. 3d 736.

No. 06–8834. WHITEHEAD *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 06–8846. CHRIST *v.* JAMROG, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8876. WIMBLEY *v.* MCKUNE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 840.

No. 06–8896. BROWN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 06–8898. BROWN *v.* KLEM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–8919. POWE *v.* CULLIVER, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 729.

No. 06–8922. MITCHELL *v.* WILD ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–8926. ABDULRAFI *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 824.

No. 06–8965. RICHARDS *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 199 Fed. Appx. 144.

No. 06–8976. AGUIRRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 796.

No. 06–9004. BUSH *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 931 So. 2d 910.

No. 06–9039. DAVIS *v.* HAYNES, WARDEN. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 06–9168. MCGEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–9170. MOORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9171. PARKES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9174. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 976.

No. 06–9177. WEBB *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9179. OESCH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9180. RAMIREZ *v.* WILLIAMSON, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 209 Fed. Appx. 214.

No. 06–9184. TAYLOR *v.* GARDNER, JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, ET AL. Ct. App. D. C. Certiorari denied.

No. 06–9187. ATRELLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9188. BEER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9189. BENNAFIELD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9201. GORTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 284.

No. 06–9202. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 899.

No. 06–9203. CASTANEDA DE LA HOZ *v.* UNITED STATES (Reported below: 204 Fed. Appx. 429); ANDAYA *v.* UNITED STATES (205 Fed. Appx. 260); MIRELES *v.* UNITED STATES (471 F. 3d 551); GARCIA *v.* UNITED STATES (470 F. 3d 1143); AGUERO *v.* UNITED STATES (205 Fed. Appx. 237); LOPEZ-RAMIREZ, AKA RAMIREZ *v.* UNITED STATES (209 Fed. Appx. 445); ARRIAGA *v.* UNITED STATES (205 Fed. Appx. 275); BLANCO-LOBO, AKA LOPEZ-CANSINO *v.* UNITED STATES (209 Fed. Appx. 406); and TUDON *v.* UNITED STATES (205 Fed. Appx. 279). C. A. 5th Cir. Certiorari denied.

No. 06–9204. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 202 Fed. Appx. 550.

No. 06–9205. WILSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 332.

No. 06–9207. CORLISS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 777.

No. 06–9208. STONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9211. BIRD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 233.

No. 06–9215. ERVIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9222. RICHARDSON *v.* HUMPHREYS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–9223. SANTIAGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 204 Fed. Appx. 50.

No. 06–9224. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9225. MARTINEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 903.

No. 06–9226. HOLDEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 30.

No. 06–9227. VALENCIA FARIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 3d 393.

No. 06–9229. BECKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 762.

No. 06–9235. GARCIA-ALCAZAR, AKA PEREZ-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 549.

No. 06–9237. FUCHS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 467 F. 3d 889.

No. 06–9238. HUTSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 675.

No. 06–9239. HARTRIDGE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 896 A. 2d 198.

No. 06–9240. HONEYCUT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 401.

No. 06–9241. FULLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 471.

No. 06–9242. CORNEJO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 600.

No. 06–9246. DIXON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 366 Ill. App. 3d 848, 853 N. E. 2d 1235.

No. 06–9248. HARPER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 466 F. 3d 634.

No. 06–9249. HICKMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 419.

No. 06–9258. JOYA-GUERRERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 87.

No. 06–9259. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 541.

No. 06–9264. POSTADAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 637.

No. 06–9269. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 484.

No. 06–9271. HINTZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9272. MILLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 234.

No. 06–9273. MORGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 933.

No. 06–9278. CHARLES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 467 F. 3d 828.

No. 06–9279. CHARLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 3d 402.

No. 06–9281. MCCASKILL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 70.

No. 06–9283. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–9285. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9286. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–644. NEW MEXICO *v.* FORBES, CHIEF JUDGE, DISTRICT COURT OF NEW MEXICO, FIFTH JUDICIAL DISTRICT, ET AL. Sup. Ct. N. M. Motion of respondent Ralph Rodney Earnest for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 138 N. M. 264, 119 P. 3d 144.

No. 06–590. EBBERS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 458 F. 3d 110.

No. 06–882. ROLLINS ET AL. *v.* FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN ET AL. Ct. App. Mo., Eastern Dist. Motion of Missionary Baptist Minister's Union of St. Louis and Vicinity et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 199 S. W. 3d 823.

No. 06–944. AT&T CORP. ET AL. *v.* GAVIN, ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED. C. A. 7th Cir. Motion of Peter J. Wallison for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 464 F. 3d 634.

Rehearing Denied

No. 06–546. JENSEN *v.* SWEET HOME ONE CARE FACILITY ET AL., *ante*, p. 1113;

No. 06–6188. WINSTON *v.* UNITED STATES, *ante*, p. 1119;

No. 06–7104. CAGLE *v.* ST. JOHNS COUNTY SCHOOL DISTRICT ET AL., *ante*, p. 1121;

No. 06–7124. WILLIAMS *v.* DES ARC CITY POLICE DEPARTMENT ET AL., *ante*, p. 1122;

No. 06–7152. MITCHELL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1122;

No. 06–7530. MILLER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1130;

No. 06–7656. BLOM *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, *ante*, p. 1134;

No. 06–7757. ALLEN *v.* GENERAL MOTORS CORP., *ante*, p. 1136;

No. 06–7778. AWALA *v.* GONZALES, ATTORNEY GENERAL, ET AL., *ante*, p. 1137;

No. 06–7781. SCHATZKE *v.* HUMPHREYS, WARDEN, *ante*, p. 1137;

No. 06–7815. VAN BUREN *v.* UNITED STATES, *ante*, p. 1139;
No. 06–7818. IN RE BUTLER, *ante*, p. 1110;
No. 06–7845. DALEY *v.* FEDERAL BUREAU OF PRISONS, *ante*, p. 1140;
No. 06–8302. PHILLIPS *v.* UNITED STATES, *ante*, p. 1173; and
No. 06–8500. IN RE BERRYHILL, *ante*, p. 1165. Petitions for rehearing denied.

MARCH 7, 2007

Miscellaneous Order

No. 06–9790 (06A841). IN RE NICHOLS. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 06–9810 (06A845). NICHOLS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

MARCH 9, 2007

Dismissal Under Rule 46

No. 06–877. AF-CAP, INC. *v.* REPUBLIC OF CONGO ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 462 F. 3d 417.

MARCH 14, 2007

Dismissal Under Rule 46

No. 06–9542. JONES *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari dismissed under this Court's Rule 46.1.

MARCH 16, 2007

Miscellaneous Orders

No. 06A894. RAMADAN *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Application for stay or injunctive relief, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. 06–480. LEEGIN CREATIVE LEATHER PRODUCTS, INC. *v.* PSKS, INC., DBA KAY'S KLOSET . . . KAY'S SHOES. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1092.] Motion of Consumer Federation of America for leave to participate in oral argument as *amicus curiae* and for additional time for oral argument denied.

No. 06–484. TELLABS, INC., ET AL. *v.* MAKOR ISSUES & RIGHTS, LTD., ET AL. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1105.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

MARCH 19, 2007

Certiorari Granted—Vacated and Remanded

No. 06–8682. CABRELLIS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 06–8713. FLORES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–8716. GILL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–8806. ZAMUDIO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.;

No. 06–8835. BROCK *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Reported below: 141 Cal. App. 4th 1320, 46 Cal. Rptr. 3d 896;

No. 06–8948. HAYES *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist.; and

No. 06–9051. THO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Cunningham* v. *California*, *ante*, p. 270.

Certiorari Dismissed

No. 06–8758. ROBERSON *v.* GRAZIANO. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 202 Fed. Appx. 622.

No. 06–8820. HADDAD *v.* ADECCO USA, INC., ET AL. Ct. App. Mich. Motion of petitioner for leave to proceed *in forma pau-*

peris denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 06M74. JAWORSKI *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS; and

No. 06M75. NEAL *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 05–1157. CREDIT SUISSE SECURITIES (USA) LLC, FKA CREDIT SUISSE FIRST BOSTON LLC, ET AL. *v.* BILLING ET AL. C. A. 2d Cir. Having been advised by JUSTICE KENNEDY that he now realizes that he should have recused himself from participation in this case, and does now recuse himself, the Court vacates its order of Thursday, December 7, 2006 [*ante*, p. 1092]. The Court has reconsidered the petition for writ of certiorari, which is granted. THE CHIEF JUSTICE and JUSTICE KENNEDY have not participated in the vote to withdraw the order of December 7, 2006, or in the instant reconsideration of the petition for writ of certiorari. Reported below: 426 F. 3d 130.

No. 06–830. JOBLOVE ET AL. *v.* BARR LABORATORIES, INC., ET AL. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 06–9485. IN RE KA LUN PIN;

No. 06–9491. IN RE POZO;

No. 06–9568. IN RE BENNETT; and

No. 06–9610. IN RE WILLIAMS. Petitions for writs of habeas corpus denied.

No. 06–8748. IN RE BUTLER; and

No. 06–9327. IN RE FIELDS. Petitions for writs of mandamus denied.

No. 06–8917. IN RE MCCULLOUGH. Petition for writ of mandamus and/or prohibition denied.

No. 06–8785. IN RE BOYD;

No. 06–8786. IN RE BOYD;

No. 06–8787. IN RE BOYD; and

No. 06–8788. IN RE BOYD. Petitions for writs of prohibition denied.

Certiorari Denied

No. 06–639. DETROIT INTERNATIONAL BRIDGE CO. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 450 F. 3d 205.

No. 06–643. MILLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 571.

No. 06–669. VERITY INTERNATIONAL, LTD., ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 443 F. 3d 48.

No. 06–672. WILK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 452 F. 3d 1208.

No. 06–723. FITCH *v.* MORROW. C. A. 5th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 347.

No. 06–735. DOE *v.* OBERWEIS DAIRY; and
No. 06–767. OBERWEIS DAIRY *v.* DOE. C. A. 7th Cir. Certiorari denied. Reported below: 456 F. 3d 704.

No. 06–789. DRACH *v.* BRUCE, WARDEN, ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 281 Kan. 1058, 136 P. 3d 390.

No. 06–792. TOLEDO, PEORIA & WESTERN RAILWAY *v.* SURFACE TRANSPORTATION BOARD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 462 F. 3d 734.

No. 06–795. STONE *v.* HEALTH CARE AUTHORITY OF THE CITY OF HUNTSVILLE, ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 06–797. UNITED STATES FOREST SERVICE ET AL. *v.* EARTH ISLAND INSTITUTE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 442 F. 3d 1147.

No. 06–799. D. T. *v.* BRIDGEWATER-RARITAN REGIONAL BOARD OF EDUCATION. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–801. SHAVERS *v.* UNITED STATES FIRE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 316.

No. 06–806. CONSOLIDATION COAL CO. *v.* WILLIAMS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 453 F. 3d 609.

No. 06–831. CADIZ *v.* BANK OF NEW YORK, TRUSTEE. C. A. 9th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 654.

No. 06–836. PACHECO DE PEREZ ET AL. *v.* AT&T CORP. ET AL. Ct. App. Ga. Certiorari denied.

No. 06–837. OLD STONE CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 450 F. 3d 1360.

No. 06–839. LOUISIANA HEALTH SERVICE & INDEMNITY CO., DBA BLUE CROSS AND BLUE SHIELD OF LOUISIANA *v.* RAPIDES HEALTHCARE SYSTEM ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 461 F. 3d 529.

No. 06–891. MOON *v.* HARRISON PIPING SUPPLY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 465 F. 3d 719.

No. 06–898. HUERTAS *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 188 Fed. Appx. 136.

No. 06–901. GOETZ, COMMISSIONER, TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION, ET AL. *v.* JOHN B., BY HIS NEXT FRIEND, L. A., ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–912. ADAIR ET AL. *v.* CHARTER COUNTY OF WAYNE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 452 F. 3d 482.

No. 06–914. DABISH *v.* DAIMLERCHRYSLER CORP. ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–916. AZIMI *v.* JORDAN'S MEATS, INC. C. A. 1st Cir. Certiorari denied. Reported below: 456 F. 3d 228.

No. 06–918. LOGAN *v.* HCA, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–920. ROBERTS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 369 S. C. 580, 632 S. E. 2d 871.

No. 06–927. CONWAY ET UX. *v.* WILSON, CHAPTER 7 TRUSTEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 324.

No. 06–933. LYNCH ET AL. *v.* CITY OF JELLICO, TENNESSEE, ET AL. Sup. Ct. Tenn. Certiorari denied. Reported below: 205 S. W. 3d 384.

No. 06–934. KAUFMAN *v.* KAYE, CHIEF JUDGE, COURT OF APPEALS OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 466 F. 3d 83.

No. 06–936. BUYER'S CORNER REALTY, INC., ET AL. *v.* NORTHERN KENTUCKY ASSOCIATION OF REALTORS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 485.

No. 06–938. LI *v.* LOS ANGELES COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 640.

No. 06–943. BROWN ET UX. *v.* INTERBAY FUNDING, LLC, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 198 Fed. Appx. 223.

No. 06–949. CLOEREN *v.* DRUSCHEL. Ct. App. Wis. Certiorari denied. Reported below: 295 Wis. 2d 858, 723 N. W. 2d 430.

No. 06–957. HERNANDEZ *v.* ARELLANO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 263.

No. 06–961. HOUK, WARDEN *v.* JOSEPH. C. A. 6th Cir. Certiorari denied. Reported below: 469 F. 3d 441.

No. 06–962. XEROX CORPORATION RETIREMENT INCOME GUARANTEE PLAN ET AL. *v.* MILLER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 464 F. 3d 871.

No. 06–963. VAUGHAN *v.* FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 920 So. 2d 650.

No. 06–966. JONES *v.* SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 646.

No. 06–971. ILLINOIS CENTRAL RAILROAD CO. *v.* ACUFF ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 950 So. 2d 947.

No. 06–972. GIOVANELLA *v.* TOWN OF ASHLAND CONSERVATION COMMISSION. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 447 Mass. 720, 857 N. E. 2d 451.

No. 06–973. HALE *v.* ESTATE OF LEAR. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 46, 178 P. 3d 767.

No. 06–976. BANK OF LOUISIANA *v.* AETNA US HEALTHCARE, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 468 F. 3d 237.

No. 06–977. WOLFENBARGER, WARDEN *v.* SATTERLEE. C. A. 6th Cir. Certiorari denied. Reported below: 453 F. 3d 362.

No. 06–983. ROBERT J. DEBRY AND ASSOCIATES, P. C. *v.* QWEST DEX, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 685.

No. 06–988. HIGHWAY J CITIZENS GROUP ET AL. *v.* DEPARTMENT OF TRANSPORTATION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 456 F. 3d 734.

No. 06–993. ZAVARAS, DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. *v.* STEVENS. C. A. 10th Cir. Certiorari denied. Reported below: 465 F. 3d 1229.

No. 06–998. ANDERSON *v.* ABODEEN ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 29 App. Div. 3d 431, 816 N. Y. S. 2d 415.

No. 06–1003. DANIELS *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 569.

No. 06–1012. TRUDEAU *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 186 Fed. Appx. 998.

No. 06–1017. SANDOVAL *v.* MARTINEZ. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 29 App. Div. 3d 774, 815 N. Y. S. 2d 679.

No. 06–1024. REYNOLDS *v.* MURPHY ET AL. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 188 S. W. 3d 252.

No. 06–1026. PROCTOR *v.* DEPARTMENT OF EDUCATION. C. A. 6th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 345.

No. 06–1029. ALMAGHZAR *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 3d 915.

No. 06–1031. AU-TOMOTIVE GOLD, INC. *v.* VOLKSWAGEN OF AMERICA, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 3d 1062.

No. 06–1040. HIGGINS *v.* DEPARTMENT OF THE AIR FORCE. C. A. Fed. Cir. Certiorari denied. Reported below: 186 Fed. Appx. 1002.

No. 06–1043. FABIANO *v.* WILMES ET AL. Ct. App. Colo. Certiorari denied. Reported below: 141 P. 3d 907.

No. 06–1053. SEWELL ET AL. *v.* 1199 NATIONAL BENEFIT FUND FOR HEALTH AND HUMAN SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 187 Fed. Appx. 36.

No. 06–1058. COCA-COLA CO. ET AL. *v.* BIGIO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 448 F. 3d 176.

No. 06–1059. CANOE MANUFACTURING CO., INC., ET AL. *v.* JONES ET AL. Super. Ct. Pa. Certiorari denied.

No. 06–1076. O'NEIL *v.* MONTANA SUPREME COURT COMMISSION ON THE UNAUTHORIZED PRACTICE OF LAW. Sup. Ct. Mont. Certiorari denied. Reported below: 334 Mont. 311, 147 P. 3d 200.

No. 06–1083. CAVICCHI *v.* CHERTOFF, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 774.

No. 06–1092. AMUNRUD *v.* BOARD OF APPEALS ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 158 Wash. 2d 208, 143 P. 3d 571.

No. 06–1095. SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY *v.* BOLDEN. Sup. Ct. Pa. Certiorari denied. Reported below: 589 Pa. 402, 909 A. 2d 797.

No. 06–1098. MARTINELLI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 454 F. 3d 1300.

No. 06–1103. WOOD *v.* BILLINGTON, LIBRARIAN OF CONGRESS. C. A. D. C. Cir. Certiorari denied.

No. 06–1119. JOSEPH *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 465 F. 3d 87.

No. 06–6668. THOMPSON ET UX. *v.* CALIFORNIA EX REL. MONTEREY MUSHROOMS, INC. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 136 Cal. App. 4th 24, 38 Cal. Rptr. 3d 677.

No. 06–7153. PAUL *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–7631. CRUDUP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 461 F. 3d 433.

No. 06–7731. PRUITT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 458 F. 3d 477.

No. 06–7734. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 838.

No. 06–7758. LAMBERT *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 449 F. 3d 774.

No. 06–7863. AMAYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 207.

No. 06–7907. TAYLOR *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 29 App. Div. 3d 450, 815 N. Y. S. 2d 90.

No. 06–7997. PEAK *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 197 S. W. 3d 536.

No. 06–8084. ROBINSON *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 271 Neb. 698, 715 N. W. 2d 531.

No. 06–8338. RUIZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 3d 638.

No. 06–8430. EDWARDS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 198 Fed. Appx. 4.

No. 06–8454. WHITAKER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 351.

No. 06–8664. STREATER *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 271.

No. 06–8674. COE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–8681. DEMARSH *v.* ISSAKS, JUDGE, DISTRICT COURT OF TEXAS, DENTON COUNTY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–8683. CRAIG ET VIR *v.* TUSCARAWAS COUNTY JOB AND FAMILY SERVICES ET AL. Ct. App. Ohio, Tuscarawas County. Certiorari denied.

No. 06–8686. DOUGLAS *v.* ANSON FINANCIAL, INC., ET AL. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 06–8688. PROPHET *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–8693. LEWIS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8699. BUCKNER *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 453 F. 3d 195.

No. 06–8700. SNELLING *v.* MCFADDEN ET AL. Sup. Ct. Mo. Certiorari denied.

No. 06–8702. GAYLOR *v.* CATTELL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 06–8706. HENYARD *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 459 F. 3d 1217.

No. 06–8708. HEDENBERG *v.* RABER ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 903 A. 2d 323.

No. 06–8711. JOHNSON *v.* QUEENS ADMINISTRATION FOR CHILDREN'S SERVICES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 197 Fed. Appx. 33.

No. 06–8726. MURRAY *v.* ST. JOHN'S REGIONAL MEDICAL CENTER. Ct. App. Mo., Western Dist. Certiorari denied.

No. 06–8728. PALMER *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 06–8731. MAYNARD *v.* BOONE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 468 F. 3d 665.

No. 06–8735. RICHARDSON *v.* SPURLOCK ET AL. Sup. Ct. La. Certiorari denied. Reported below: 937 So. 2d 858.

No. 06–8737. WILLIAMS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 911 A. 2d 804.

No. 06–8741. TAYLOR *v.* WOLFE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8746. RAMIREZ *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 77.

No. 06–8754. BARKER *v.* HILL, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 06–8763. MALDONADO ORTIZ *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 06–8764. SHAW *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8765. BLACK *v.* FORT WADE CORRECTIONAL CENTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 791.

No. 06–8767. BERRIOS *v.* NEW YORK. Sup. Ct. N. Y., Kings County Certiorari denied.

No. 06–8769. CONSALVO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 937 So. 2d 555.

No. 06–8778. EVANS *v.* OHIO. Ct. App. Ohio, Scioto County. Certiorari denied.

No. 06–8779. PIGEON *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 74, 178 P. 3d 793.

No. 06–8780. PAGE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–8784. SULLIVAN *v.* DELOACH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 459 F. 3d 1097.

No. 06–8789. JONES *v.* BROWN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 461 F. 3d 353.

No. 06–8791. KUPLEN *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied.

No. 06–8792. CANO *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 06–8795. SMITH *v.* NIX, CHAIRMAN, GEORGIA BOARD OF PARDONS AND PAROLES, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–8797. MILLER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 357 Ill. App. 3d 1087, 895 N. E. 2d 696.

No. 06–8799. BOROM *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 939 So. 2d 113.

No. 06–8807. JEMISON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–8808. SIEBERT *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 455 F. 3d 1269.

No. 06–8812. ROYSTER *v.* CITY OF NEW YORK, NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 26 App. Div. 3d 234, 808 N. Y. S. 2d 550.

No. 06–8817. CARDENAS *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–8819. TREECE *v.* TERRELL, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 230.

No. 06–8821. AMERSON *v.* IOWA ET AL.; and
No. 06–8822. HAYES *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 512.

No. 06–8830. VAN ZANT *v.* FLORIDA PAROLE COMMISSION. C. A. 11th Cir. Certiorari denied.

No. 06–8832. WANG *v.* UNITED STATES MEDICAL LICENSE EXAMINATION SECRETARIAT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 206 Fed. Appx. 67.

No. 06–8836. CHISM *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 130 Wash. App. 1054.

No. 06–8838. DIXON *v.* CAMPBELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 164.

No. 06–8841. WILLIAMS *v.* UCHTMAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–8842. OLIVER *v.* PIAZZA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–8845. COCKE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 201 S. W. 3d 744.

No. 06–8850. MINCEY *v.* NELSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–8854. MARTIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–8862. KANEHE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 06–8865. VANCRETE *v.* VANCRETE. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 359 Ill. App. 3d 1205, 904 N. E. 2d 1245.

No. 06–8867. JENNINGS *v.* KNIGHT, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 06–8868. DAUGHTRY *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 262.

No. 06–8869. ALBERNI *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 458 F. 3d 860.

No. 06–8875. THORNTON *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–8877. MOORE *v.* POLISH AMERICAN DEFENSE COMMITTEE, INC., ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–8886. RICKS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–8892. JOHNSON *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 06–8893. SCOTT *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. Certiorari denied. Reported below: 201 Fed. Appx. 411.

No. 06–8895. YOUNGBLOOD *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–8924. TANKSLEY *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 06–8934. DOUGLAS *v.* BROOKS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION. C. A. 3d Cir. Certiorari denied. Reported below: 201 Fed. Appx. 119.

No. 06–8938. MCNABB *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 06–8969. VARNER *v.* MONOHAN, DIRECTOR, ILLINOIS DEPARTMENT OF HUMAN SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 460 F. 3d 861.

No. 06–8973. BOHANNON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 293.

No. 06–8981. BONDARENKO *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 984.

No. 06–9000. SANDERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 563.

No. 06–9005. ALLEN *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 593.

No. 06–9006. BAPTISTA *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 06–9009. ALLEN *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 06–9010. ACOSTA *v.* GONZALES, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 188 Fed. Appx. 132.

No. 06–9012. COBB *v.* KELLY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9013. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 562.

No. 06–9026. NASH *v.* POLLARD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–9034. HUNTER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 140 Cal. App. 4th 1147, 45 Cal. Rptr. 3d 216.

No. 06–9043. CLICK *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–9057. URIBE *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–9059. EARLE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–9062. PASTOR-HERNANDEZ *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 855.

No. 06–9063. MAYO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 140 Cal. App. 4th 535, 44 Cal. Rptr. 3d 497.

No. 06–9066. STAHL *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Sup. Ct. S. C. Certiorari denied.

No. 06–9068. SHANNON *v.* NAVARRO. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–9072. EPPERSON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 197 S. W. 3d 46.

No. 06–9084. JOYNER *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 187 Fed. Appx. 133.

No. 06–9107. PATTERSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 951.

No. 06–9117. TURNER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 936 So. 2d 89.

No. 06–9124. YANG *v.* KNIGHT RIDDER DIGITAL. C. A. 9th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 745.

No. 06–9150. REED *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–9162. EBERSOLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 287.

No. 06–9185. THOMAS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 06–9191. MCROY *v.* SHEAHAN, SHERIFF, COOK COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 523.

No. 06–9194. STEPHENS *v.* WYNNE, SECRETARY OF THE AIR FORCE. C. A. D. C. Cir. Certiorari denied. Reported below: 204 Fed. Appx. 25.

No. 06–9196. CREVELING *v.* WASHINGTON DEPARTMENT OF FISH AND WILDLIFE. Super. Ct. Wash., Okanogan County. Certiorari denied.

No. 06–9200. ELLIOTT *v.* LAMARQUE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 606.

No. 06–9220. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 466 F. 3d 537.

No. 06–9234. GAMEZ-MENDOZA, AKA SANCHEZ QUINTERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 678.

No. 06–9245. CRESPO-ECHEVARRIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–9247. FERMIN *v.* UNITED STATES (Reported below: 204 Fed. Appx. 350); GUERRERO-DELGADO, AKA DELGADO, AKA GARCIA-LOPEZ *v.* UNITED STATES (202 Fed. Appx. 780); OLIVAS-AGUILAR, AKA OLIVAS, AKA AGUILAR OLIVAS *v.* UNITED STATES (203 Fed. Appx. 622); PENA-RAMIREZ *v.* UNITED STATES (203 Fed. Appx. 669); ORTIZ-RIOS, AKA MATA *v.* UNITED STATES (203 Fed. Appx. 651); GONZALEZ-MEDINA *v.* UNITED STATES (205 Fed. Appx. 281); ZAMARRIPA-RODRIGUEZ *v.* UNITED STATES (205 Fed. Appx. 264); IZAGUIRRE-CASTRO *v.* UNITED STATES (205 Fed. Appx. 276); MUNIZ-MARIN, AKA VASQUEZ-CASTILLO *v.* UNITED STATES (205 Fed. Appx. 280); FUENTES *v.* UNITED STATES (205 Fed. Appx. 266); TORRES-NAVA *v.* UNITED STATES (206 Fed. Appx. 360); JUAREZ-JIMENEZ *v.* UNITED STATES (207 Fed. Appx. 419); VICTORIA-GUTIERREZ *v.* UNITED STATES (208 Fed. Appx. 304); MORALES-GUTIERREZ *v.* UNITED STATES (208 Fed. Appx. 310); FIGUEROA-HERNANDEZ *v.* UNITED STATES (212 Fed. Appx. 326); RODRIGUEZ-SOTELO *v.* UNITED STATES (208 Fed. Appx. 303); and CRUZ-ALVARADO *v.* UNITED STATES (209 Fed. Appx. 433). C. A. 5th Cir. Certiorari denied.

No. 06–9254. FREEMAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 38 Cal. 4th 630, 133 P. 3d 1013.

No. 06–9265. LONG THANH NGUYEN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 360 N. C. 653, 637 S. E. 2d 189.

No. 06–9275. DEANGELIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 873.

No. 06–9276. MESA, AKA MEZA-MENDEZ *v.* UNITED STATES (Reported below: 205 Fed. Appx. 264); SALINAS-CHAVEZ *v.* UNITED STATES (209 Fed. Appx. 448); JIMENEZ-FLORES *v.* UNITED STATES (209 Fed. Appx. 405); BRAVO-PINA *v.* UNITED STATES (209 Fed. Appx. 404); CRUZ-SANCHEZ *v.* UNITED STATES (209 Fed. Appx. 433); MARTINEZ-VALEDEZ *v.* UNITED STATES (209 Fed. Appx. 439); OLIVO-RAMOS *v.* UNITED STATES (209 Fed. Appx. 434); SANCHEZ-USELO, AKA GALIANO *v.* UNITED STATES (208 Fed. Appx. 311); SALGADO *v.* UNITED STATES (208 Fed. Appx. 305); RAMIREZ-VELA *v.* UNITED STATES (208 Fed. Appx. 305); PINEDA-

MORALES *v.* UNITED STATES (208 Fed. Appx. 306); ESCOBEDO-VALDEZ *v.* UNITED STATES (205 Fed. Appx. 502); OSPINO-ALZATE, AKA ALZATE OSPINO, AKA OSPINA ALZATE, AKA ALZATE OSPINA, AKA GARCIA RODRIGUEZ *v.* UNITED STATES (208 Fed. Appx. 307); GARCIA-VARGAS *v.* UNITED STATES (207 Fed. Appx. 503); RAMOS-MEJIA, AKA HERNANDEZ-MEJIAS *v.* UNITED STATES (208 Fed. Appx. 303); HERNANDEZ-AGUIRRE *v.* UNITED STATES (205 Fed. Appx. 465); CASTILLO-RODRIGUEZ *v.* UNITED STATES (205 Fed. Appx. 283); BARRADAS-PEREZ *v.* UNITED STATES (205 Fed. Appx. 266); RAMOS-QUIJADA *v.* UNITED STATES (205 Fed. Appx. 277); ESTRADA-MENDOZA, AKA CHAVEZ-MENDOZA *v.* UNITED STATES (475 F. 3d 258); GUZMAN *v.* UNITED STATES (214 Fed. Appx. 413); JIMENEZ-BANEGAS *v.* UNITED STATES (209 Fed. Appx. 384); and STEWART *v.* UNITED STATES (208 Fed. Appx. 291). C. A. 5th Cir. Certiorari denied.

No. 06–9277. CAPOZZI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 204 Fed. Appx. 996.

No. 06–9287. OLICK *v.* JOHN HANCOCK MUTUAL LIFE INSURANCE CO. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 200 Fed. Appx. 6.

No. 06–9289. QUERUBIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 209.

No. 06–9290. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 662.

No. 06–9293. SHERWOOD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 373.

No. 06–9294. WILLIE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 892.

No. 06–9297. ROJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 339.

No. 06–9298. RUIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–9303. MCBRAYER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9304. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 254.

No. 06–9307. TODD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 830.

No. 06–9309. ZUNIGA-HERNANDEZ *v.* CHILDRESS, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 236.

No. 06–9315. BRYANT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 187 Fed. Appx. 134.

No. 06–9317. HERRING *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 360 N. C. 651, 637 S. E. 2d 183.

No. 06–9318. HERNANDEZ, AKA HERNANDEZ-REFUGIO *v.* UNITED STATES (Reported below: 206 Fed. Appx. 344); MARTINEZ-CATALAN *v.* UNITED STATES (213 Fed. Appx. 257); CHRISTIAN *v.* UNITED STATES (213 Fed. Appx. 256); HERNANDEZ-ANTONIO, AKA HERNANDEZ-MARQUEZ *v.* UNITED STATES (214 Fed. Appx. 369); and RUIZ-CARMONA, AKA PEREZ *v.* UNITED STATES (214 Fed. Appx. 483). C. A. 5th Cir. Certiorari denied.

No. 06–9322. GUILLEN-RODRIGUEZ *v.* UNITED STATES (Reported below: 205 Fed. Appx. 281); HERNANDEZ-ORDUNA *v.* UNITED STATES (205 Fed. Appx. 284); DIAZ-RAMOS *v.* UNITED STATES (205 Fed. Appx. 280); DUARTE-CANO, AKA GARCIA *v.* UNITED STATES (205 Fed. Appx. 283); MENA-OROZCO *v.* UNITED STATES (205 Fed. Appx. 268); ZAMORA-VALLEJO *v.* UNITED STATES (470 F. 3d 592); GARCIA-GALEANO *v.* UNITED STATES (207 Fed. Appx. 396); CASAS-GARCIA *v.* UNITED STATES (208 Fed. Appx. 314); ALEMAN-ARJONA *v.* UNITED STATES (208 Fed. Appx. 313); CHACON *v.* UNITED STATES (208 Fed. Appx. 313); MARTINEZ-SAUCEDO *v.* UNITED STATES (207 Fed. Appx. 504); HERNANDEZ-MONTANO *v.* UNITED STATES (208 Fed. Appx. 311); FLORES-MORALES, AKA MORALES, AKA CASTRO *v.* UNITED STATES (209 Fed. Appx. 438); ESPINOZA-GARCIA *v.* UNITED STATES (209 Fed. Appx. 437); ANDRADE-GONZALEZ *v.* UNITED STATES (213 Fed. Appx. 263); and BUSTAMANTE-CASTILLO *v.* UNITED STATES (214 Fed. Appx. 377). C. A. 5th Cir. Certiorari denied.

No. 06–9323. HOOD *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 06–9325. LYONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 120.

No. 06–9326. HUNT *v.* PINION, SUPERINTENDENT, PIEDMONT CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 267.

No. 06–9329. FILES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9334. THOMAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 467 F. 3d 49.

No. 06–9340. BAEZ *v.* MILLER, SHERIFF, DOUGLAS COUNTY, GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 06–9341. BROUSSARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 786.

No. 06–9342. CARTER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–9343. CHAVEZ-GARCIA, AKA DUARTE-CANTU *v.* UNITED STATES (Reported below: 205 Fed. Appx. 230); FIGUEROA-PEDRAZA *v.* UNITED STATES (205 Fed. Appx. 255); GALLEGOS-TREJO *v.* UNITED STATES (205 Fed. Appx. 285); GARCIA-ORTEGA, AKA GARCIA *v.* UNITED STATES (205 Fed. Appx. 244); GOMEZ-VILLEGAS *v.* UNITED STATES (206 Fed. Appx. 336); MARTINEZ-MONTOYA *v.* UNITED STATES (205 Fed. Appx. 242); MORENO-TORRES, AKA PENA-GARCIA *v.* UNITED STATES (205 Fed. Appx. 268); and NARANJO-GOMEZ *v.* UNITED STATES (206 Fed. Appx. 336). C. A. 5th Cir. Certiorari denied.

No. 06–9348. SHRINER *v.* ROHLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–9349. SOLIS-HERRERA *v.* UNITED STATES (Reported below: 206 Fed. Appx. 375); ESCOBAR-MARTINEZ, AKA JOSE-MARTINEZ, AKA RUIZ-MARTINEZ *v.* UNITED STATES (205 Fed. Appx. 282); CUBIAS-ARIAS *v.* UNITED STATES (205 Fed. Appx. 276); MARTINEZ-VEGA *v.* UNITED STATES (471 F. 3d 559); RODRIGUEZ-FALCON *v.* UNITED STATES (210 Fed. Appx. 383); and ACOSTA *v.* UNITED STATES (214 Fed. Appx. 398). C. A. 5th Cir. Certiorari denied.

No. 06–9351. TODD *v.* JACKSON ET AL. Ct. App. Tenn. Certiorari denied. Reported below: 213 S. W. 3d 277.

No. 06–9355. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 759.

No. 06–9357. SMITH *v.* SIMPSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9358. SMITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–9359. OEHM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9360. SANTANA-ARANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 272.

No. 06–9361. RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–9362. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 240.

No. 06–9363. CASTRO-GUERRERO, AKA GUERRERO CASTRO, AKA CASTRO *v.* UNITED STATES (Reported below: 205 Fed. Appx. 227); and RODRIGUEZ-DE VASQUEZ, AKA RODRIGUEZ *v.* UNITED STATES (205 Fed. Appx. 246). C. A. 5th Cir. Certiorari denied.

No. 06–9364. WINTERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 614.

No. 06–9366. MANNIX *v.* SHEETZ. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 06–9367. CORREA-JAEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 273.

No. 06–9368. KIRSCH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9370. MAGESTRO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9373. JIMENEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 656.

No. 06–9376. ACOSTA-SALINAS, AKA ACOSTA *v.* UNITED STATES (Reported below: 206 Fed. Appx. 340); ARRIETA-MACIAS *v.* UNITED STATES (205 Fed. Appx. 250); AVALOS-GURROLA *v.* UNITED STATES (206 Fed. Appx. 342); BERMUDES-CRUZ *v.* UNITED STATES (205 Fed. Appx. 244); CEDENO-ZAMBRANO *v.* UNITED STATES (205 Fed. Appx. 228); CHAVEZ-CAMPOS, AKA HERNANDEZ-HERNANDEZ *v.* UNITED STATES (205 Fed. Appx. 287); ESTUARDO FRANCO, AKA TAVAR-FRANCO *v.* UNITED STATES (205 Fed. Appx. 251); GARCIA-ALBA, AKA GARCIA-ALVA *v.* UNITED STATES (206 Fed. Appx. 341); GARCIA-MARTINEZ, AKA MARTINEZ, AKA GARCIA *v.* UNITED STATES (205 Fed. Appx. 288); HERNANDEZ-ANTUNES *v.* UNITED STATES (205 Fed. Appx. 287); HERNANDEZ-RODRIGUEZ *v.* UNITED STATES (205 Fed. Appx. 251); IBARRA-GALINDO, AKA PEREZ-HUERTO *v.* UNITED STATES (206 Fed. Appx. 337); LEAL-PEREZ, AKA BRISENO, AKA LEAL, AKA LOPEZ-BUENO *v.* UNITED STATES (205 Fed. Appx. 246); MACEDO-RIOS *v.* UNITED STATES (205 Fed. Appx. 252); MENDEZ-RIOS, AKA MENDEZ *v.* UNITED STATES (206 Fed. Appx. 340); PADILLA-GARCIA, AKA PADILLA *v.* UNITED STATES (205 Fed. Appx. 250); SERRANO-GOMEZ *v.* UNITED STATES (206 Fed. Appx. 342); and TINOCO-NUNEZ *v.* UNITED STATES (206 Fed. Appx. 343). C. A. 5th Cir. Certiorari denied.

No. 06–9377. BRADD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–9378. ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 270.

No. 06–9379. DIAZ-ORTEGA, AKA DIAZ ORTEGA, AKA RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 270.

No. 06–9380. VASQUEZ-CARBAJAL *v.* UNITED STATES (Reported below: 207 Fed. Appx. 772); and MARROQUIN-GONZALEZ *v.* UNITED STATES (205 Fed. Appx. 628). C. A. 9th Cir. Certiorari denied.

No. 06–9383. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 284.

No. 06–9385. CASTRO *v.* ANDREWS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 545.

No. 06–9386. EBANKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9388. CHAVEZ-QUEZADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9389. DISCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9393. CASTANEDA-CEJA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 720.

No. 06–9395. ECHEVERRIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 936.

No. 06–9403. SLEDGE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 460 F. 3d 963.

No. 06–9405. SOLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9406. FLORES-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 505.

No. 06–9413. TIDSWELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–9415. THOMPSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 488.

No. 06–9420. JOHANSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9422. PINKNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 745.

No. 06–9423. PRICE *v.* UNITED STATES; and
No. 06–9458. PRESSLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 469 F. 3d 63.

No. 06–9426. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 734.

No. 06–9435. BRYANT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 535.

No. 06–9436. STERLING *v.* PATTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9437. DURHAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–9439. BUCKNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–9441. DEGLACE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9445. TCHIBASSA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 452 F. 3d 918.

No. 06–9446. BOUNDS *v.* YOUNG, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 800.

No. 06–9450. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9456. CYRUS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 323.

No. 06–9460. PAEZ-ORTIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 946.

No. 06–9466. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 815.

No. 06–9469. POLK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9473. MARTINEZ ZAPATA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 875.

No. 06–9476. BARROWS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9479. GALLAHER *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–9480. FINLEY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 219 W. Va. 747, 639 S. E. 2d 839.

No. 06–9482. DANIEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 173 Fed. Appx. 766.

No. 06–9488. FELICIANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 925.

No. 06–9493. CORTEZ-RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 454 F. 3d 1038.

No. 06–9494. DAVILA-RODRIGUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 468 F. 3d 1012.

No. 06–9498. ROCHE-MARTINEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 467 F. 3d 591.

No. 06–9499. VALLES MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9501. MARTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–9502. MCLAURIN *v.* MCBRIDE, WARDEN. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 220 W. Va. 141, 640 S. E. 2d 204.

No. 06–9504. MEDINA-IBARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 682.

No. 06–9507. MOON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 782.

No. 06–9510. ROBLES-ROSAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 688.

No. 06–9513. GUTIERREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 695.

No. 06–9514. FALLS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 195 Fed. Appx. 62.

No. 06–9515. HIGAREDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 687.

No. 06–9518. HILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 459 F. 3d 966.

No. 06–9519. HUFFMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 461 F. 3d 777.

No. 06–9521. GRACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 647.

No. 06–9522. FANFAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 468 F. 3d 7.

No. 06–9524. HOLLAND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9525. FAIR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9530. HAYES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 364.

No. 06–9531. HENRIQUES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 228.

No. 06–9533. SOTO-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 792.

No. 06–9534. SANTOSTEFANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 448 F. 3d 681.

No. 06–9535. BREWER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 773.

No. 06–9540. PAYNE, AKA RAYNE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 638.

No. 06–9544. LYLES *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 06–9545. URIAS-BOJORQUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 706.

No. 06–9546. TAYLOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 698.

No. 06–9549. DOCTOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 286.

No. 06–9550. ELIZONDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 3d 692.

No. 06–9553. DAVIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 205 Fed. Appx. 28.

No. 06–9557. MASON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 287.

No. 06–9558. COVIAN-SANDOVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 3d 1090.

No. 06–9565. MCCOURT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 468 F. 3d 1088.

No. 06–9574. MERCADO, AKA MERCADO-CERVANTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 753.

No. 06–9577. ACOSTA *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 359 Ill. App. 3d 1200, 904 N. E. 2d 1243.

No. 06–9578. ABUMEZER *v.* WILEY, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 06–9579. ANDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–739. KELLEY *v.* BRACEWELL. C. A. 11th Cir. Motion of Professors Susan Block-Lieb et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 454 F. 3d 1234.

No. 06–779. UNIVERSITY OF PUERTO RICO *v.* TOLEDO. C. A. 1st Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 454 F. 3d 24.

No. 06–1008. MAALOUF, DBA CHICAGO INTERNATIONAL NETWORK *v.* CITIGROUP GLOBAL MARKETS, INC., FKA SALOMON SMITH BARNEY, INC. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 156 Fed. Appx. 367.

Rehearing Denied

No. 05–5094. FLOWERS *v.* UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 546 U. S. 882;

No. 05–5543. FLOWERS *v.* UNITED STATES, 546 U. S. 909;

No. 06–640. CANNADY *v.* FRANZ ET AL., *ante*, p. 1115;

No. 06–683. BURCH *v.* PHILIP MORRIS USA, INC., *ante*, p. 1116;

No. 06–764. FREDERICK *v.* FLORIDA, *ante*, p. 1181;

No. 06–6215. CUESTA *v.* BERTRAND ET AL., *ante*, p. 1001;

No. 06–6527. JONES *v.* SMITH-JONES, *ante*, p. 1057;

No. 06–7249. CLINE *v.* UNITED STATES, *ante*, p. 1064;

No. 06–7289. BROWN *v.* UNITED STATES, *ante*, p. 1182;

No. 06–7313. LENOIR *v.* CABANA, *ante*, p. 1125;

No. 06–7329. BIERLEY *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 1125;

No. 06–7421. ZHENLU ZHANG *v.* SCIENCE & TECHNOLOGY CORP. ET AL., *ante*, p. 1128;

No. 06–7443. ROTH *v.* BOARD OF EDUCATION OF GENESEO UNIT SCHOOL DISTRICT NO. 228, *ante*, p. 1128;

No. 06–7552. IN RE REDFORD, *ante*, p. 1109;

No. 06–7572. BIERLEY *v.* PENNSYLVANIA, *ante*, p. 1132;

No. 06–7650. MARQUEZ *v.* OKLAHOMA, *ante*, p. 1134;

No. 06–7746. ADAMES *v.* NEW YORK CITY BOARD OF ELECTIONS ET AL., *ante*, p. 1170;

No. 06–7801. EQUELS *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL., *ante*, p. 1170;

No. 06–7846. DALEY *v.* FEDERAL BUREAU OF PRISONS ET AL., *ante*, p. 1182;

No. 06–7862. JERRY-EL *v.* PETSOCK ET AL., *ante*, p. 1183;

No. 06–7866. BOMER *v.* MICHIGAN DEPARTMENT OF CORRECTIONS, *ante*, p. 1141;

No. 06–7891. MURPHY *v.* MAINE, *ante*, p. 1142;

No. 06–8067. CREVELING *v.* WASHINGTON, *ante*, p. 1184; and

No. 06–8405. DUMONDE, AKA SPENCER, AKA MOORE *v.* UNITED STATES, *ante*, p. 1186. Petitions for rehearing denied.

No. 06–524. SWAN *v.* WAL-MART STORES, INC., ET AL., *ante*, p. 1156; and

No. 06–7259. TSEHAI *v.* LONG, WARDEN, *ante*, p. 1157. Petitions for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of these petitions.

MARCH 20, 2007

Miscellaneous Orders

No. 06A900. STRICKLAND, GOVERNOR OF OHIO, ET AL. *v.* BIROS. Application to vacate the stay of execution of sentence of death entered by the United States District Court for the Southern District of Ohio on December 21, 2006, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

No. 06A903. NEALY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS

DIVISION. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

No. 06–10170 (06A904). IN RE NEALY. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

MARCH 26, 2007

Certiorari Granted—Vacated and Remanded

No. 05–1439. DEROCHE ET VIR *v.* ARIZONA INDUSTRIAL COMMISSION. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Travelers Casualty & Surety Co. of America* v. *Pacific Gas & Elec. Co.*, *ante*, p. 443. Reported below: 434 F. 3d 1188.

No. 06–9336. BENITEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Cunningham* v. *California*, *ante*, p. 270.

Certiorari Dismissed

No. 06–9563. MOSS *v.* UNITED STATES. C. A. 5th Cir. It appearing that petitioner died February 19, 2007, certiorari dismissed.

No. 06–9661. FLEMING *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 197 Fed. Appx. 271.

Miscellaneous Orders

No. D–2155. IN RE DISBARMENT OF MOORE, 529 U. S. 1127. Motion for vacation of disbarment and reinstatement to the Bar of this Court denied.

No. 06M76. WHITE *v.* MUSCARELLO ET AL.; and

No. 06M77. PACK *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06M78. WINTERROWD *v.* MUNICIPALITY OF ANCHORAGE, ALASKA. Motion for leave to file writ of error denied.

No. 06–9723. IN RE SKILLERN. Petition for writ of habeas corpus denied.

Certiorari Granted

No. 06–694. UNITED STATES *v.* WILLIAMS. C. A. 11th Cir. Certiorari granted. Reported below: 444 F. 3d 1286.

No. 06–43. STONERIDGE INVESTMENT PARTNERS, LLC *v.* SCIENTIFIC-ATLANTA, INC., ET AL. C. A. 8th Cir. Certiorari granted. THE CHIEF JUSTICE and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 443 F. 3d 987.

Certiorari Denied

No. 06–477. BANDA-ORTIZ *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 445 F. 3d 387.

No. 06–863. FAUSEY *v.* HILLER. Sup. Ct. Pa. Certiorari denied. Reported below: 588 Pa. 342, 904 A. 2d 875.

No. 06–982. LAMB ET AL. *v.* KONTGIAS ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 169 Md. App. 466, 901 A. 2d 860.

No. 06–987. GLASER ET UX., INDIVIDUALLY AND ON BEHALF OF GLASER ET AL. *v.* ENZO BIOCHEM, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 464 F. 3d 474.

No. 06–995. DANE INVESTMENTS, L. L. C. *v.* H & R BLOCK FINANCIAL ADVISORS, INC., FKA OLDE DISCOUNT CORP. C. A. 5th Cir. Certiorari denied.

No. 06–996. PAULSON *v.* OREGON STATE BAR ET AL. Sup. Ct. Ore. Certiorari denied. Reported below: 341 Ore. 542, 145 P. 3d 171.

No. 06–997. RHINES *v.* NORLARCO CREDIT UNION. Ct. App. Ind. Certiorari denied. Reported below: 847 N. E. 2d 233.

No. 06–1000. KISSI *v.* KREMEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 955.

No. 06–1001. JEAN ALEXANDER COSMETICS, INC. *v.* L'OREAL USA, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 3d 244.

No. 06–1002. MANDY R., BY AND THROUGH HER PARENTS AND GUARDIANS, MR. R. ET UX., ET AL. *v.* RITTER, GOVERNOR OF COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 464 F. 3d 1139.

No. 06–1004. MOSES *v.* STERLING COMMERCE (AMERICA), INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–1030. BRITTON *v.* UNIVERSITY OF MARYLAND AT BALTIMORE COUNTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 282.

No. 06–1051. BROWN *v.* WYNNE, SECRETARY OF THE AIR FORCE. C. A. 6th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 430.

No. 06–1052. SAKKARAPOPE *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 642.

No. 06–1055. ROCKEFELLER *v.* WESTINGHOUSE WASTE ISOLATION DIVISION, A DIVISION OF CBS CORP., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 612.

No. 06–1077. ODYSSEY CONTRACTING CORP. ET AL. *v.* MARYLAND CASUALTY CO. Super. Ct. Pa. Certiorari denied. Reported below: 894 A. 2d 750.

No. 06–1101. HALVONIK *v.* DUDAS, DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 192 Fed. Appx. 964.

No. 06–1138. ABBES *v.* EMBRAER SERVICES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 898.

No. 06–1154. MALOUF *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 466 F. 3d 21.

No. 06–7827. HAYNES *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 934 So. 2d 983.

No. 06–7880. LEESON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 453 F. 3d 631.

No. 06–8439. WILLIAMS *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 458 F. 3d 1233.

No. 06–8513. AVILA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 38 Cal. 4th 491, 133 P. 3d 1076.

No. 06–8514. BARBER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 952 So. 2d 393.

No. 06–8552. DAVIS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 367 Ark. 330, 240 S. W. 3d 115.

No. 06–8631. ZAMMIT *v.* SHIRE US, INC. C. A. 6th Cir. Certiorari denied.

No. 06–8859. ROBINSON *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8887. RAGLAND *v.* POWELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 218.

No. 06–8890. YONAI *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–8894. WASHINGTON *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 455 F. 3d 722.

No. 06–8901. AKINRO *v.* DEPARTMENT OF HOMELAND SECURITY ET AL. Certiorari denied. Reported below: 203 Fed. Appx. 529.

No. 06–8903. SPENCER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–8905. VINES *v.* ROBINSON, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 06–8906. WAGENER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–8907. OGLE *v.* THOMPSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–8910. WOODS *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Sup. Ct. S. C. Certiorari denied.

No. 06–8911. NUNEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–8913. COOLEY *v.* LAVIGNE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8925. REYES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 272.

No. 06–8927. ALLISON *v.* ALLISON. Ct. App. N. Y. Certiorari denied. Reported below: 7 N. Y. 3d 853, 857 N. E. 2d 1123.

No. 06–8928. TORREZ *v.* ELEY ET AL. Ct. App. Colo. Certiorari denied.

No. 06–8929. WILLIAMS *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–8930. JETER *v.* JEWISH VOCATIONAL SERVICES ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–8933. NORRIS *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8937. SMITH *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 320.

No. 06–8939. TURCUS *v.* OAKLAND COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–8949. LACY *v.* FRANK ET AL. C. A. 7th Cir. Certiorari denied.

No. 06–8955. MILLER *v.* AYRES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 649.

No. 06–8966. SADLER *v.* TILLEY. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 164.

No. 06–8968. McLENDON *v.* McCOLLUM, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–8970. KEITH *v.* HOUK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 455 F. 3d 662.

No. 06–8972. DE LA GARZA *v.* HERNANDEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–8974. ABOUTALEB *v.* LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 141 Cal. App. 4th 1411, 47 Cal. Rptr. 3d 115.

No. 06–8982. BAZE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 06–8983. LOPOS *v.* MERIDEN BOARD OF EDUCATION ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–8987. PADILLA *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–8988. MILLER *v.* PALMER, WARDEN. Ct. App. Mich. Certiorari denied.

No. 06–8989. TROSTLE *v.* REILLEY ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–8992. REED *v.* PRINCE ET AL. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 194 S. W. 3d 101.

No. 06–8997. LIFRIERI *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 06–8999. RIVERS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 130 Wash. App. 689, 128 P. 3d 608.

No. 06–9007. MATHEWS *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 790.

No. 06–9018. VASQUEZ HERNANDEZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 06–9023. HOOPER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 142 P. 3d 463.

No. 06–9028. RAHIM-HUNTER *v.* BOWMAN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 526.

No. 06–9048. MENDONCA *v.* TIDEWATER INC. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 933 So. 2d 233.

No. 06–9053. ROBERTS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–9056. OSBORNE *v.* OREGON ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–9060. DEBOUE *v.* BERBARY, SUPERINTENDENT, COLLINS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–9061. PAYNE *v.* RUSHTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 256.

No. 06–9064. JENKINS *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 06–9069. SVAB *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 944 So. 2d 346.

No. 06–9070. MACKEY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 939 So. 2d 111.

No. 06–9073. DAWSON *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9079. AGUILAR *v.* WOOLSEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 567.

No. 06–9080. ALWAN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 978 So. 2d 79.

No. 06–9081. BULLOCK *v.* FRANKLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 644.

No. 06–9082. STUBBS *v.* BUDGE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 641.

No. 06–9085. CARTER *v.* GREENE, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–9108. YAR *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 842.

No. 06–9109. ROBERTSON *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 207 Ore. App. 464, 142 P. 3d 113.

No. 06–9111. PABON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 898 A. 2d 1132.

No. 06–9122. JOHNSON *v.* KELCHER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–9127. OLIVER *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 201 Fed. Appx. 34.

No. 06–9142. THOMAS *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–9154. JACKSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 939 So. 2d 98.

No. 06–9155. MCCALL *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied. Reported below: 364 S. C. 205, 612 S. E. 2d 453.

No. 06–9167. WINDER *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 4th Cir. Certiorari denied.

No. 06–9176. EVANS *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 154 N. H. 142, 908 A. 2d 796.

No. 06–9221. RODRIGUEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–9231. HELTON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–9274. ORDONEZ *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied. Reported below: 156 S. W. 3d 850.

No. 06–9280. COMEAUX *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 471.

No. 06–9282. TAFARI *v.* FRANCE ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–9299. REDFORD *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 36 Kan. App. 2d xvii, 136 P. 3d 964.

No. 06–9308. HARRIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–9332. UTSEY *v.* DAWSY, SHERIFF, CITRUS COUNTY, FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 06–9352. THOMPSON *v.* MICHIGAN ATTORNEY GRIEVANCE COMMISSION. C. A. 6th Cir. Certiorari denied.

No. 06–9369. LARKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 575.

No. 06–9391. EVANS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–9397. SAYRE *v.* MCBRIDE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 268.

No. 06–9408. ARTEAGA-GOMEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–9411. POWELL *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 214 Fed. Appx. 197.

No. 06–9454. BOYD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 588.

No. 06–9472. PASOUR *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Cleveland County, N. C. Certiorari denied.

No. 06–9477. YOUNG *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–9551. COX *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 211.

No. 06–9552. CARTER *v.* WILSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–9560. STEWART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 924.

No. 06–9561. RODRIGUEZ-TORRES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–9581. RUSAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 460 F. 3d 989.

No. 06–9583. MARTINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–9584. KLOSZEWSKI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 993.

No. 06–9587. PERKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 559.

No. 06–9594. WILLIAMS *v.* JOHNS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 872.

No. 06–9595. PICQUIN-GEORGE, AKA DALEY *v.* HOLT, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 200 Fed. Appx. 159.

No. 06–9596. MCLENNON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 174.

No. 06–9599. PHILLIPS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 468 F. 3d 1264.

No. 06–9602. SEALS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 489.

No. 06–9603. BENNETT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 469 F. 3d 46.

No. 06–9615. HILTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–9620. IRORERE *v.* ADAMS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 278.

No. 06–9623. SCOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–9624. SWAFFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9627. MATTEI-ALBIZU *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 449 F. 3d 61.

No. 06–9628. RANDOLPH *v.* FELTS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 478.

No. 06–9635. TERRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–9639. WEBB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–9640. FIELDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–9641. HENRY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 150 Fed. Appx. 68.

No. 06–9642. GORGONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 139.

No. 06–9643. HAYDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 266.

No. 06–9645. STEPHENS *v.* HERRERA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 464 F. 3d 895.

No. 06–9652. GRIFFITHS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9653. HALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9655. HOGGATT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9656. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–9659. HENDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–9666. HAHN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 758.

No. 06–9669. CASTILLO-CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 324.

No. 06–9671. COOPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9673. LOEZA-VARGAS *v.* UNITED STATES (Reported below: 216 Fed. Appx. 415); FRANCO-SOLANO *v.* UNITED STATES (215 Fed. Appx. 386); ZUNIGA-REYES *v.* UNITED STATES (216 Fed. Appx. 454); BARRERA-SAUCEDO *v.* UNITED STATES (215 Fed. Appx. 386); VILLANUEVA-MACHADO, AKA VILLANUEVA *v.* UNITED STATES (215 Fed. Appx. 389); PACHECO-PEREZ *v.* UNITED STATES (216 Fed. Appx. 454); SANCHEZ-BURGOS *v.* UNITED STATES (215 Fed. Appx. 385); BENAVIDES-ALEMAN *v.* UNITED STATES (215 Fed. Appx. 391); SANCHEZ-SALVADOR, AKA SALVADOR-CASTELLANOS *v.* UNITED STATES (215 Fed. Appx. 392); PUENTE-CAMPOS *v.* UNITED STATES (216 Fed. Appx. 416); GONZALEZ-ARREGA *v.* UNITED STATES (216 Fed. Appx. 459); CARRIZALES-CEDILLO *v.* UNITED STATES (216 Fed. Appx. 455); CRUZ *v.* UNITED STATES (216 Fed. Appx. 455); LABORIEL-GOTAY *v.* UNITED STATES (215 Fed. Appx. 387); LARRAGA-PEREZ, AKA LARA-PEREZ *v.* UNITED STATES (215 Fed. Appx. 388); LAGUNAS-LEIJA *v.* UNITED STATES (215 Fed. Appx. 392); FEDERICO-ABREO *v.* UNITED STATES (215 Fed. Appx. 396); ALONSO-LOPEZ *v.* UNITED STATES (216 Fed. Appx. 417); and PAZ-ROMERO *v.* UNITED STATES (216 Fed. Appx. 421). C. A. 5th Cir. Certiorari denied.

No. 06–9674. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 298.

No. 06–9675. CARMONA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9676. SLATER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 489.

No. 06–9680. ARAICA-ROMERO *v.* UNITED STATES (Reported below: 216 Fed. Appx. 456); CORDOVA-TURCIOS *v.* UNITED STATES (215 Fed. Appx. 387); RAMOS-PONCE *v.* UNITED STATES (215 Fed. Appx. 390); VASQUEZ-ORTIZ *v.* UNITED STATES (215 Fed. Appx. 394); MACHADO-ALBERTO *v.* UNITED STATES (215 Fed. Appx. 394);

DON-MORALES *v.* UNITED STATES (216 Fed. Appx. 456); GOMEZ-GONZALEZ *v.* UNITED STATES (216 Fed. Appx. 452); MARMOLEJO-OCHOA, AKA MEDRANO-GUTIERREZ *v.* UNITED STATES (217 Fed. Appx. 332); CEBALLOS-ZUNIGA *v.* UNITED STATES (216 Fed. Appx. 458); PIEDRA-GARCIA, AKA PIEDRO-POMPA *v.* UNITED STATES; CASTRO-SALAZAR *v.* UNITED STATES (216 Fed. Appx. 459); GARCIA-REYES *v.* UNITED STATES (215 Fed. Appx. 390); PEREZ-OLIVEROS, AKA PEREZ-OLIVARES *v.* UNITED STATES (215 Fed. Appx. 393); SANCHEZ-ORTIZ *v.* UNITED STATES (215 Fed. Appx. 393); DEHOYO-MONCADA *v.* UNITED STATES (216 Fed. Appx. 418); MENDEZ-MENDEZ, AKA ESCOBEDO-GARCIA *v.* UNITED STATES (216 Fed. Appx. 420); PALENCIA-CONTRERAS *v.* UNITED STATES (216 Fed. Appx. 458); ALMENDAREZ-LOPEZ *v.* UNITED STATES (216 Fed. Appx. 457); GONZALEZ-MARTINEZ *v.* UNITED STATES (216 Fed. Appx. 418); GALLEGOS-CORTEZ, AKA GALLEGOS CORTEZ, AKA CORTES GALLEGOS, AKA GALLEGOS, AKA CUELLAR, AKA GALLEGOS-CORTES *v.* UNITED STATES (216 Fed. Appx. 414); and NUEVO-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9684. HARMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 237.

No. 06–9685. HARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–9688. HARPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9694. GENTRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9699. MAYTORENA-GALEANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 592.

No. 06–9707. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9712. MANGIARDI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9715. WORRELL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 916 A. 2d 199.

No. 06–9719. SLOLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 3d 355.

No. 06–9725. HARRIS *v.* WILEY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–9728. LOVE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 Fed. Appx. 504.

No. 06–9738. HAYS *v.* MALDONADO. C. A. 11th Cir. Certiorari denied.

No. 06–9741. HYNDS-MATUTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 761.

No. 06–9744. CARSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 469 F. 3d 528.

No. 06–9745. DANIELS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 191.

No. 06–9747. DUBOSE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9753. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9754. DE JESUS SERRANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 551.

No. 06–9758. ZISKIND *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 471 F. 3d 266.

No. 06–9759. WASHINGTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–9762. BELTRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 534.

No. 06–9765. BENSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9767. ATKINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 957.

No. 06–9768. WALKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 673.

No. 06–9769. TINAJERO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 469 F. 3d 722.

No. 06–9776. CLARK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 208 Fed. Appx. 137.

No. 06–9778. MCGEHEE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 815.

No. 06–9781. THOMPSON *v.* MARTIN, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 06–9786. BAKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–705. DOW CORNING CORP. *v.* OFFICIAL COMMITTEE OF UNSECURED CREDITORS ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 456 F. 3d 668.

No. 06–867. COBELL ET AL. *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 455 F. 3d 301.

No. 06–868. COBELL ET AL. *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 455 F. 3d 317.

No. 06–1015. BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY *v.* KEPHART. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 465 F. 3d 964.

No. 06–1034. SMOOK *v.* MINNEHAHA COUNTY, SOUTH DAKOTA, ET AL. C. A. 8th Cir. Motion of Juvenile Law Center for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 457 F. 3d 806.

No. 06–9052. HO THAI NGUYEN *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 192 Fed. Appx. 603.

No. 06–9611. WADLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 185 Fed. Appx. 137.

Rehearing Denied

No. 06–5451. JACKSON *v.* DINGLE, WARDEN, *ante*, p. 1168;

No. 06–6756. GOODWIN *v.* CARUSO, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1061;

No. 06–7342. PERKINS *v.* CAIN, WARDEN, *ante*, p. 1125;

No. 06–7719. MCMANUS *v.* RIDGLEY ET AL., *ante*, p. 1136;

No. 06–7820. COLE *v.* MCKEE, WARDEN, *ante*, p. 1171;

No. 06–7910. IN RE YVANEZ, *ante*, p. 1109;

No. 06–7913. CLARK *v.* JOHNSON ET AL., *ante*, p. 1171;

No. 06–7984. TURAY *v.* GONZALES, ATTORNEY GENERAL, *ante*, p. 1171;

No. 06–8130. HITTER *v.* HAGAN, WARDEN, ET AL., *ante*, p. 1184;

No. 06–8256. JOHNSON *v.* UNITED STATES, *ante*, p. 1155;

No. 06–8463. WHITE *v.* UNITED STATES, *ante*, p. 1187; and

No. 06–8509. IN RE WARD, *ante*, p. 1179. Petitions for rehearing denied.

No. 06–5727. JIMENEZ-BELTRE, AKA PEREZ, AKA CINTRON, AKA GUZMAN-RIVERA *v.* UNITED STATES, *ante*, p. 1118; and

No. 06–7579. DE SUSTAR-WARE *v.* NORDSTROM, INC., ET AL., *ante*, p. 1132. Motions for leave to file petitions for rehearing denied.

MARCH 29, 2007

Miscellaneous Orders

No. 06A932. PIPPIN *v.* TEXAS. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

No. 06–10057 (06A898). IN RE PIPPIN. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 06–10320 (06A927). PIPPEN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL IN-

STITUTIONS DIVISION, ET AL. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 223 Fed. Appx. 433.

APRIL 2, 2007

Certiorari Granted—Vacated and Remanded

No. 06–8341. JUNAID *v.* KEMPKER ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Jones* v. *Bock*, *ante*, p. 199. Reported below: 450 F. 3d 350.

Certiorari Dismissed

No. 06–9161. OSWALD *v.* JULIAN ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–9178. MURDOCK *v.* AMERICAN AXLE & MANUFACTURING, INC. (two judgments). Ct. App. Mich. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–9214. ALLEN *v.* COLORADO ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 205 Fed. Appx. 675.

Miscellaneous Orders

No. 06M79. SHEPHERD *v.* UNITED STATES. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 06M80. IN RE SEALED CASE. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 06M81. WHITE *v.* OREGON DEPARTMENT OF HUMAN SERVICES, VOCATIONAL REHABILITATION SERVICES ADMINISTRATION. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 05–85. POWEREX CORP. *v.* RELIANT ENERGY SERVICES, INC., ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1178.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–340. NATIONAL ASSOCIATION OF HOME BUILDERS ET AL. *v.* DEFENDERS OF WILDLIFE ET AL.; and

No. 06–549. ENVIRONMENTAL PROTECTION AGENCY *v.* DEFENDERS OF WILDLIFE ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1105.] Motion of petitioners National Association of Home Builders et al. for divided argument denied.

No. 06–413. UTTECHT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY *v.* BROWN. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1162.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–427. TENNESSEE SECONDARY SCHOOL ATHLETIC ASSN. *v.* BRENTWOOD ACADEMY. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1105.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–531. SOLE, SECRETARY, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, ET AL. *v.* WYNER ET AL. C. A. 11th Cir. [Certiorari granted *sub nom. Struhs* v. *Wyner*, *ante*, p. 1162.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–593. LONG ISLAND CARE AT HOME, LTD., ET AL. *v.* COKE. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1105.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–969. FEDERAL ELECTION COMMISSION *v.* WISCONSIN RIGHT TO LIFE, INC.; and

No. 06–970. MCCAIN, UNITED STATES SENATOR, ET AL. *v.* WISCONSIN RIGHT TO LIFE, INC. D. C. D. C. [Probable jurisdiction postponed, *ante*, p. 1177.] Motion of the Solicitor General for divided argument granted.

No. 06–6407. PANETTI *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS

DIVISION. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1106.] The parties are directed to file supplemental briefs addressing the following question: "Must petitioner's habeas application be dismissed as 'second or successive' pursuant to 28 U. S. C. § 2244?" The briefs, not to exceed 15 pages, are to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Wednesday, April 11, 2007.

No. 06–9949. IN RE SKILLERN. Petition for writ of habeas corpus denied.

No. 06–9126. IN RE PAGE; and
No. 06–9148. IN RE SMITH. Petitions for writs of mandamus denied.

No. 06–9198. IN RE CONNER. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 06–612. BARANSKI *v.* FIFTEEN UNKNOWN AGENTS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 452 F. 3d 433.

No. 06–808. DOE, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 463 F. 3d 1314.

No. 06–817. APPLIED COS. *v.* GEREN, ACTING SECRETARY OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 456 F. 3d 1380.

No. 06–900. FIRST NATIONAL BANK OF AMES, IOWA *v.* INNOVATIVE CLINICAL & CONSULTING SERVICES, LLC, DBA TOCO HILLS URGENT CARE. Ct. App. Ga. Certiorari denied. Reported below: 280 Ga. App. 337, 634 S. E. 2d 88.

No. 06–1019. AIR LINE PILOTS ASSOCIATION, INTERNATIONAL *v.* PENSION BENEFIT GUARANTY CORPORATION ET AL.; and
No. 06–1021. UNITED RETIRED PILOTS BENEFIT PROTECTION ASSN. ET AL. *v.* PENSION BENEFIT GUARANTY CORPORATION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 468 F. 3d 444.

No. 06–1020. PHELPS *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 589.

No. 06–1022. JIQIANG XU *v.* MICHIGAN STATE UNIVERSITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 452.

No. 06–1023. RICHARDSON *v.* SAFEWAY ROCKY MOUNTAIN FEDERAL CREDIT UNION. Ct. App. Colo. Certiorari denied.

No. 06–1025. LACY ET VIR *v.* BOARD OF SUPERVISORS OF HALIFAX COUNTY, VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–1027. VILLADSEN ET AL. *v.* MASON COUNTY ROAD COMMISSION ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 475 Mich. 857, 713 N. W. 2d 770.

No. 06–1028. MARTINEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 06–1033. MONTGOMERY *v.* CITIBANK (SOUTH DAKOTA), N. A. (two judgments). Cir. Ct. Oakland County, Mich. Certiorari denied.

No. 06–1035. WHITAKER *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY, ET AL. (two judgments). Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 06–1038. MICHIGAN HIGH SCHOOL ATHLETIC ASSN., INC., ON BEHALF OF ITSELF AND ITS MEMBERS *v.* COMMUNITIES FOR EQUITY, ON BEHALF OF ITSELF, ITS MEMBERS AND ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 459 F. 3d 676.

No. 06–1041. FRENCH, TRUSTEE FOR THE DEBTOR ESTATE OF BERGMAN ET UX. *v.* FREY ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–1042. HOLLANDER *v.* BROWN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 457 F. 3d 688.

No. 06–1048. MCFARLAND *v.* BRYAN CAVE LLP ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 417.

No. 06–1049. WELLS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 848 N. E. 2d 1133.

No. 06–1056. EDWARDS ET AL. *v.* DEPARTMENT OF ENERGY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 382.

No. 06–1066. GARNER ET AL. *v.* CUYAHOGA COUNTY JUVENILE COURT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 279.

No. 06–1071. K&K CONSTRUCTION, INC., ET AL. *v.* MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY ET AL. Ct. App. Mich. Certiorari denied. Reported below: 267 Mich. App. 523, 705 N. W. 2d 365.

No. 06–1085. AYERS ET AL. *v.* FREITAG. C. A. 9th Cir. Certiorari denied. Reported below: 468 F. 3d 528.

No. 06–1088. GUANG QUI LI *v.* AGAGAN ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–1114. NWADIOGBU *v.* DEPARTMENT OF EDUCATION. C. A. D. C. Cir. Certiorari denied.

No. 06–1118. PATEL ET AL. *v.* CITY OF SAN BERNARDINO, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 752.

No. 06–1124. TOLEDO *v.* JACKSON, SECRETARY OF HOUSING AND URBAN DEVELOPMENT. C. A. 6th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 536.

No. 06–7654. BOXER X *v.* HARRIS. C. A. 11th Cir. Certiorari denied. Reported below: 437 F. 3d 1107.

No. 06–7702. CASADOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 707.

No. 06–7724. WEST *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–7896. GONZALES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 3d 384.

No. 06–8162. BOWIE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 06–8372. HILL *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8557. STARLING *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 903 A. 2d 758.

No. 06–8650. BRYANT *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 951 So. 2d 732.

No. 06–8883. RODRIGUEZ LEDESMA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 39 Cal. 4th 641, 140 P. 3d 657.

No. 06–9090. SOULE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–9092. CANELA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–9106. BROWN *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 925.

No. 06–9110. SABANDITH *v.* GUNDY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9125. MCGILL *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 213 Ariz. 147, 140 P. 3d 930.

No. 06–9128. JOHNSON *v.* JOHNS ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–9129. VAN DETTA *v.* VAN DETTA ET AL. Sup. Ct. Ga. Certiorari denied.

No. 06–9131. PASSMAN *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 937 So. 2d 17.

No. 06–9132. BANKS *v.* LAVIGNE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9134. BURGESS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–9136. BLANKS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–9137. BAKER *v.* HOLT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–9139. MENDICINO *v.* TEXAS WORKFORCE COMMISSION ET AL. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 06–9144. MILES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–9149. SCHULER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–9152. JOHNSON *v.* PRELESNIK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9156. SERRATORE *v.* NEW HAMPSHIRE DIVISION OF CHILDREN, YOUTH AND FAMILIES. Sup. Ct. N. H. Certiorari denied.

No. 06–9175. ENGLAND *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 940 So. 2d 389.

No. 06–9182. SIMPSON *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9183. SMITH *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 207 S. W. 3d 135.

No. 06–9186. VARTINELLI *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9193. MCCULLOUGH *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–9197. CREASEY *v.* TIBBALS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9199. CARRIER *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 35 Kan. App. 2d x, 131 P. 3d 1280.

No. 06–9206. VARELA *v.* HATCH, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 667.

No. 06–9209. SOSA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–9213. BAER *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 196.

No. 06–9216. MYRON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 28 App. Div. 3d 681, 814 N. Y. S. 2d 198.

No. 06–9296. SMITH *v.* FEDERAL EXPRESS CORP. C. A. 11th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 852.

No. 06–9328. GOLDSTEIN *v.* FLAMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 678.

No. 06–9372. GEORGE J. *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 280 Conn. 551, 910 A. 2d 931.

No. 06–9590. TIRADO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 203 Fed. Appx. 419.

No. 06–9771. RODRIGUEZ-TOMALLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 620.

No. 06–9772. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–9775. MADRIAGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 537.

No. 06–9788. SAVAGE *v.* HASTINGS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9793. EDELKIND *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 467 F. 3d 791.

No. 06–9794. CALHOUN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 793.

No. 06–9795. CUNNINGHAM *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 207 Fed. Appx. 5.

No. 06–9796. ABDULLAH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 470 F. 3d 220.

No. 06–9797. VELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 481.

No. 06–9799. LEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 352.

No. 06–9802. MCGEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9805. STARNES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 157 Fed. Appx. 687.

No. 06–9808. DODSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 262.

No. 06–9815. MONTAGUE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 337.

No. 06–9817. REED *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 815.

No. 06–9818. SHED *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 478.

No. 06–9833. JIMENEZ-VELASCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 653.

No. 06–9834. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 285.

No. 06–9836. LANARES-MENDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 272.

No. 06–9837. MARQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 780.

No. 06–9839. MINARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 657.

No. 06–9845. WALKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 473 F. 3d 71.

No. 06–9848. BLANCO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 466 F. 3d 916.

No. 06–9853. MEDINA-HUERTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 599.

No. 06–9854. MILLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 835.

No. 06–9856. RODRIGUEZ-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 831.

No. 06–9873. LOGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–9878. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 211.

No. 06–9886. WILSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 183 Fed. Appx. 814.

No. 06–9892. GODINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 802.

No. 06–9894. GUERRA-MONRREAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 302.

No. 06–9896. FENT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 724.

No. 06–9899. PRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 167.

No. 06–9909. FRAZIER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 469 F. 3d 85.

No. 06–9913. NOLAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 454.

No. 06–1016. RANBAXY LABORATORIES LTD. ET AL. *v.* PFIZER INC. ET AL. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 457 F. 3d 1284.

No. 06–1045. GALE, SECRETARY OF STATE OF NEBRASKA, ET AL. *v.* JONES ET AL. C. A. 8th Cir. Motion of National Farmers Union et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 470 F. 3d 1261.

No. 06–1195. BOUMEDIENE ET AL. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL.; and

No. 06–1196. AL ODAH, NEXT FRIEND OF AL ODAH, ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 476 F. 3d 981.

Statement of JUSTICE STEVENS and JUSTICE KENNEDY respecting the denial of certiorari.

Despite the obvious importance of the issues raised in these cases, we are persuaded that traditional rules governing our decision of constitutional questions, see *Ashwander* v. *TVA*, 297 U. S. 288, 341 (1936) (Brandeis, J., concurring), and our practice of requiring the exhaustion of available remedies as a precondition to accepting jurisdiction over applications for the writ of habeas corpus, cf. *Ex parte Hawk*, 321 U. S. 114 (1944) *(per curiam)*, make it appropriate to deny these petitions at this time. However, "[t]his Court has frequently recognized that the policy underlying the exhaustion-of-remedies doctrine does not require the exhaustion of inadequate remedies." *Marino* v. *Ragen*, 332 U. S. 561, 570, n. 12 (1947) (Rutledge, J., concurring). If petitioners later seek to establish that the Government has unreasonably delayed proceedings under the Detainee Treatment Act of 2005, Tit. X, 119 Stat. 2739, or some other and ongoing injury, alternative means exist for us to consider our jurisdiction over the allegations made by petitioners before the Court of Appeals. See 28 U. S. C. §§ 1651(a), 2241. Were the Government to take additional steps to prejudice the position of petitioners in seeking review in this Court, "courts of competent jurisdiction," including this Court, "should act promptly to ensure that the office and purposes of the writ of habeas corpus are not compromised." *Padilla* v. *Hanft*, 547 U. S. 1062, 1064 (2006) (KENNEDY, J., concurring in denial of certiorari). And as always, denial of certiorari does not constitute an expression of any opinion on the merits. See *Rasul* v. *Bush*, 542 U. S. 466, 480–481 (2004) (majority opinion of STEVENS, J.); *id.*, at 487 (KENNEDY, J., concurring in judgment).

JUSTICE BREYER, with whom JUSTICE SOUTER joins, and with whom JUSTICE GINSBURG joins as to Part I, dissenting.

I would grant the petitions for certiorari and expedite argument in these cases.

I

Petitioners, foreign citizens imprisoned at Guantanamo Bay, Cuba, raise an important question: whether the Military Commis-

sions Act of 2006, Pub. L. 109–366, 120 Stat. 2600, deprives courts of jurisdiction to consider their habeas claims, and, if so, whether that deprivation is constitutional. I believe these questions deserve this Court's immediate attention.

First, the "province" of the Great Writ, "shaped to guarantee the most fundamental of all rights, is to provide an effective *and speedy* instrument by which judicial inquiry may be had into the legality of the detention of a person." *Carafas* v. *LaVallee*, 391 U. S. 234, 238 (1968) (emphasis added and footnote omitted). Yet, petitioners have been held for more than five years. They have not obtained judicial review of their habeas claims. If petitioners are right about the law, immediate review may avoid an additional year or more of imprisonment. If they are wrong, our review is nevertheless appropriate to help establish the boundaries of the constitutional provision for the writ of habeas corpus. Cf. *Carafas*, *supra*. Finally, whether petitioners are right or wrong, our prompt review will diminish the legal "uncertainty" that now "surrounds" the application to Guantanamo detainees of this "fundamental constitutional principle." Brief for Senator Arlen Specter as *Amicus Curiae* 19; see generally *ibid.* (favoring expedited consideration of these cases). Doing so will bring increased clarity that in turn will speed review in other cases.

Second, petitioners plausibly argue that the lower court's reasoning is contrary to this Court's precedent. This Court previously held that federal jurisdiction lay to consider petitioners' habeas claims. *Rasul* v. *Bush*, 542 U. S. 466, 485 (2004) (providing several of these petitioners with the right to habeas review under law as it then stood). Our analysis proceeded under the then-operative statute, but petitioners urge that our reasoning applies to the scope of the constitutional habeas right as well. In holding that the writ extended to the petitioners in *Rasul*, we said that Guantanamo was under the complete control and jurisdiction of the United States. *Id.*, at 480–481; *id.*, at 487 (KENNEDY, J., concurring in judgment) ("Guantanamo Bay is in every practical respect a United States territory"). We then observed that the writ at common law would have extended to petitioners:

> "Application of the habeas statute to persons detained at the base is consistent with the historical reach of the writ of habeas corpus. At common law, courts exercised habeas jurisdiction over the claims of aliens detained within sovereign territory of the realm, as well as the claims of persons de-

> tained in the so-called exempt jurisdictions, where ordinary writs did not run, and all other dominions under the sovereign's control. . . . [E]ven if a territory was no part of the realm, there was no doubt as to the court's power to issue writs of habeas corpus if the territory was under the subjection of the Crown." *Id.*, at 481–482 (internal quotation marks and footnotes omitted).

Our reasoning may be applicable here. The lower court's holding, petitioners urge, disregards these statements and reasoning.

Further, petitioners in *Boumediene* are natives of Algeria, and citizens of Bosnia, seized in Bosnia. Pet. for Cert. in No. 06–1195, p. 4. Other detainees, including several petitioners in *Al Odah*, also are citizens of friendly nations, including Australia, Canada, Kuwait, Turkey, and the United Kingdom; and many were seized outside of any theater of hostility, in places like Pakistan, Thailand, and Zambia. Pet. for Cert. in No. 06–1196, pp. 2–3, and n. 2; 476 F. 3d 981, 1007 (CADC 2007) (Rogers, J., dissenting). It is possible that these circumstances will make a difference in respect to our resolution of the constitutional questions presented. Cf. *Hamdi* v. *Rumsfeld*, 542 U. S. 507, 509, 514, 521 (2004) (plurality opinion of O'Connor, J., joined by Rehnquist, C. J., and KENNEDY and BREYER, JJ.) (holding military had authority to detain United States citizen "enemy combatant," captured in a "'*zone of active combat* in a foreign theater of conflict,'" specifically Afghanistan, and stressing, in a "narrow" holding, that "*[a]ctive combat operations against Taliban fighters . . . [were] ongoing in Afghanistan*" (emphasis added)).

The Government, of course, contests petitioners' arguments on the merits. But I do not here say petitioners are correct; I say only that the questions presented are significant ones warranting our review.

If petitioners have the right of access to habeas corpus in the federal courts, this Court would then have to consider whether Congress' provision in the Detainee Treatment Act of 2005 (DTA), Tit. X, 119 Stat. 2739, providing for review in the Court of Appeals for the D. C. Circuit of those proceedings, is a constitutionally adequate substitute for habeas corpus. See *Swain* v. *Pressley*, 430 U. S. 372, 381 (1977). The Government argues that we should therefore wait for a case where, unlike petitioners here, the detainee seeking certiorari has actually sought and received

review under these alternative means. *E. g.*, Brief in Opposition 16–17. Petitioners respond, however, that further proceedings in the Court of Appeals under the DTA could not possibly remedy a constitutional violation. The lower court expressly indicated that *no constitutional rights* (not merely the right to habeas) extend to the Guantanamo detainees. 476 F. 3d, at 991–992 (rejecting petitioners' arguments under this Court's precedent that fundamental rights afforded by the Constitution extend to Guantanamo, and noting that "[p]recedent in this circuit also forecloses the detainees' claims to constitutional rights"). Therefore, it is irrelevant, to petitioners, that the DTA provides for review in the D. C. Circuit of any constitutional infirmities in the proceedings under that Act, § 1005(e)(2)(C)(ii), 119 Stat. 2742; the lower court has already rendered that provision a nullity.

Nor will further percolation of the question presented offer elucidation as to either the threshold question whether petitioners have a right to habeas, or the question whether the DTA provides a constitutionally adequate substitute. It is unreasonable to suggest that the D. C. Circuit in future proceedings under the DTA will provide review that affords petitioners the rights that the Circuit has already concluded they do not have. Ordinarily, habeas petitioners need not exhaust a remedy that is inadequate to vindicate the asserted right. See *Wilwording* v. *Swenson*, 404 U. S. 249, 250 (1971) *(per curiam)*.

The Government, in *Hamdan* v. *Rumsfeld*, 548 U. S. 557 (2006), similarly argued for delay. *Id.*, at 616 ("The Government objects to our consideration of any procedural challenge at this stage on the grounds that . . . [petitioner] will be able to raise any such challenge following a 'final decision' under the DTA"). That case, too, presented questions of the scope of the Guantanamo detainees' right to federal-court review of DTA-authorized procedures. We there rejected the Government's argument for delay as unsound. *Ibid.* ("[C]ontrary to the Government's assertion, there *is* a 'basis to presume' that the procedures . . . violate the law . . . . Under these circumstances, review . . . in advance of a 'final decision' . . . is appropriate").

Here, as in *Hamdan*, petitioners argue that the tribunals to which they have already been subjected were infirm (by, *inter alia*, denying petitioners counsel and access to evidence, Pet. for Cert. in No. 06–1195, p. 7). *Hamdan*, *supra*, at 600. Here, as in *Hamdan*, petitioners assert that these procedural infirmities can-

not be corrected by review under the DTA which provides for no augmentation of the record on appeal and, as noted above, will provide no remedy for any constitutional violation. See DTA § 1005(e)(2)(C), 119 Stat. 2742; 476 F. 3d, at 1005 (Rogers, J., dissenting). Here, as in *Hamdan*, *supra*, at 589–590, petitioners have a compelling interest in assuring in advance that the procedures to which they are subject are lawful. And here, *unlike Hamdan*, the military tribunals in Guantanamo have completed their work; all that remains are the appeals. For all these reasons, I would grant the petitions.

II

Moreover, I would expedite our consideration. In the past, this Court has expedited other cases where important issues and a need for speedy consideration were at stake. In *Ex parte Quirin*, 317 U. S. 1 (1942), the Court decided that it should grant expedited consideration,

> "[i]n view of the public importance of the questions raised by [the] petitions and of the duty which rests on the courts, in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty, and because in our opinion the public interest required that we consider and decide those questions without any avoidable delay." *Id.*, at 19.

See also *Felker* v. *Turpin*, 518 U. S. 651 (1996); *New York Times Co.* v. *United States*, 403 U. S. 713 (1971) *(per curiam)*; *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579 (1952).

For these reasons, I would grant the petitions for certiorari and the motions to expedite the cases in accordance with the schedule deemed acceptable (in the alternative) by the Government.

Rehearing Denied

No. 06–6294. KARNOFEL *v.* GIRARD POLICE DEPARTMENT ET AL., *ante*, p. 1022;

No. 06–7533. FINNEY *v.* MOSLEY, WARDEN, ET AL., *ante*, p. 1130;

No. 06–7690. BLACKWELL *v.* MITCHELL, CORRECTIONAL ADMINISTRATOR IV, MOUNTAIN VIEW CORRECTIONAL INSTITUTION, ET AL., *ante*, p. 1135;

No. 06–7901. PAYTON *v.* KRAMER, ACTING WARDEN, *ante*, p. 1183;

No. 06–7918. BROWN *v.* STOWITZKY, SUPERINTENDENT, STATE REGIONAL CORRECTIONAL FACILITY AT MERCER, ET AL., *ante*, p. 1171;

No. 06–7920. AL-DABBI *v.* UNITED STATES, *ante*, p. 1143;

No. 06–7952. FLUELLEN *v.* LAW OFFICES OF FENSTERSHEIB & FOX ET AL., *ante*, p. 1215;

No. 06–8348. BOYLE *v.* UNITED STATES, *ante*, p. 1174;

No. 06–8457. GILLARD *v.* SOUTHERN NEW ENGLAND SCHOOL OF LAW, *ante*, p. 1228; and

No. 06–8549. ALEXANDER ET UX. *v.* NORTH DAKOTA BOARD OF UNIVERSITY AND SCHOOL LANDS, *ante*, p. 1231. Petitions for rehearing denied.

No. 06–7888. FEDERICO *v.* BANK OF AMERICA ET AL., *ante*, p. 1189. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

APRIL 10, 2007

Dismissal Under Rule 46

No. 06–1245. AT&T MOBILITY LLC *v.* CALIFORNIA PUBLIC UTILITIES COMMISSION ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari dismissed under this Court's Rule 46. Reported below: 140 Cal. App. 4th 718, 44 Cal. Rptr. 3d 733.

APRIL 11, 2007

Miscellaneous Order

No. 06A960. CLARK *v.* TEXAS. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

APRIL 12, 2007

Dismissal Under Rule 46

No. 06–341. BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1105.] Writ of certiorari dismissed under this Court's Rule 46.2.

APRIL 13, 2007

Miscellaneous Orders

No. 05–1284. WATSON ET AL. *v.* PHILIP MORRIS COS., INC., ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1162.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–1448. BECK, LIQUIDATING TRUSTEE OF THE ESTATES OF CROWN VANTAGE, INC., ET AL. *v.* PACE INTERNATIONAL UNION ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1177.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–134. PERMANENT MISSION OF INDIA TO THE UNITED NATIONS ET AL. *v.* CITY OF NEW YORK, NEW YORK. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1177.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–427. TENNESSEE SECONDARY SCHOOL ATHLETIC ASSN. *v.* BRENTWOOD ACADEMY. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1105.] Motion of Association of Christian Schools International for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 06–562. UNITED STATES *v.* ATLANTIC RESEARCH CORP. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1177.] Motion of Washington et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted.

No. 06–618. OFFICE OF SENATOR MARK DAYTON *v.* HANSON. C. A. D. C. Cir. [Probable jurisdiction postponed, *ante*, p. 1177.] Motion of the United States Senate for leave to participate in oral argument as *amicus curiae* and for divided argument granted. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

APRIL 16, 2007

Certiorari Granted—Vacated and Remanded

No. 06–8747. SANDOVAL-VALLEJO *v.* UNITED STATES (Reported below: 202 Fed. Appx. 37); and FRANCO-MUNOZ *v.* UNITED STATES (202 Fed. Appx. 46). C. A. 5th Cir.; and

No. 06–8755. ARRIAGA-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Reported below: 202 Fed. Appx. 32. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Lopez* v. *Gonzales*, *ante*, p. 47.

No. 06–9442. JORGENSEN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 06–9459. MOORE *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.; and

No. 06–9543. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Cunningham* v. *California*, *ante*, p. 270.

Certiorari Dismissed

No. 06–9452. ALLEN *v.* NEVADA. Sup. Ct. Nev. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 123 Nev. 788, 210 P. 3d 704.

No. 06–9731. LINDELL *v.* HUIBREGTSE ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 205 Fed. Appx. 446.

Miscellaneous Orders

No. 06A882 (06–9804). SODIPO *v.* CAYMAS SYSTEMS, INC. C. A. 9th Cir. Application for injunction, addressed to JUSTICE GINSBURG and referred to the Court, denied. JUSTICE BREYER took no part in the consideration or decision of this application.

No. 06M82. THOMAS *v.* UNDERWOOD, WARDEN;

No. 06M83. NORTON *v.* ANDERSON ET AL.;

No. 06M84. THURSTON *v.* ILLINOIS; and

No. 06M85. BURDEN *v.* UNITED STATES POSTAL SERVICE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06–923. METROPOLITAN LIFE INSURANCE CO. ET AL. *v.* GLENN. C. A. 6th Cir.;

No. 06–937. QUANTA COMPUTER, INC., ET AL. *v.* LG ELECTRONICS, INC. C. A. Fed. Cir.; and

No. 06–939. CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA ET AL. *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 06–8266. OKPALA *v.* DREW, WARDEN, ET AL. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1201] denied.

No. 06–8445. MURDOCK *v.* AMERICAN EXPRESS CENTURION BANK ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1201] denied.

No. 06–10169. IN RE BANKS; and

No. 06–10230. IN RE SIMS. Petitions for writs of habeas corpus denied.

No. 06–10039. IN RE CARTER. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 06–9219. IN RE KING;

No. 06–9387. IN RE DAVIS;

No. 06–9430. IN RE RUIZ;

No. 06–9444. IN RE DORSEY;

No. 06–9475. IN RE BUTCHER;

No. 06–9742. IN RE HENDERSON;

No. 06–9752. IN RE LUGO; and

No. 06–9929. IN RE RICH. Petitions for writs of mandamus denied.

No. 06–1166. IN RE POWERSTEIN;

No. 06–8662. In re Swanson; and

No. 06–9478. In re Walker. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied

No. 06–622. Oregon Trollers Assn. et al. *v.* Gutierrez, Secretary of Commerce, et al. C. A. 9th Cir. Certiorari denied. Reported below: 452 F. 3d 1104.

No. 06–759. Computervision Corp. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 445 F. 3d 1355 and 467 F. 3d 1322.

No. 06–850. Cinergy Corp. et al. *v.* United States et al. C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 3d 705.

No. 06–886. Austin *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 06–892. Yusuf et al. *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 461 F. 3d 374.

No. 06–907. County Bank of Rehoboth Beach, Delaware, et al. *v.* Muhammad. Sup. Ct. N. J. Certiorari denied. Reported below: 189 N. J. 1, 912 A. 2d 88.

No. 06–913. Adams-Hedrick et vir *v.* Liberty Mutual Insurance Co. C. A. 5th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 329.

No. 06–948. Sacks *v.* Office of Foreign Assets Control, Department of the Treasury, et al. C. A. 9th Cir. Certiorari denied. Reported below: 466 F. 3d 764.

No. 06–952. Tariq *v.* Gonzales, Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 698.

No. 06–954. Arthur *v.* Allen, Commissioner, Alabama Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 452 F. 3d 1234 and 459 F. 3d 1310.

No. 06–956. ProMedica Health Systems, Inc., et al. *v.* National Labor Relations Board. C. A. 6th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 405.

No. 06–965. CITY OF LUBBOCK, TEXAS, ET AL. *v.* OSCAR RENDA CONTRACTING, INC. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 3d 378.

No. 06–1061. CHEVRON U. S. A. INC. ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 361.

No. 06–1062. CARTER, DBA FAIRVIEW VIDEO, ET AL. *v.* MGA, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 893.

No. 06–1063. ESCALERA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–1064. FEIED *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 06–1065. GABBARD *v.* FIRST TENNESSEE BANK ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–1072. MIYASHIRO *v.* MASUOKA, CHIEF JUDGE, FIFTH CIRCUIT COURT OF HAWAII. Sup. Ct. Haw. Certiorari denied.

No. 06–1074. BUTLER *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–1075. ROSS *v.* STATE CONTRACTING & ENGINEERING CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 197 Fed. Appx. 915.

No. 06–1078. DEJA VU OF NASHVILLE, INC., ET AL. *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE. C. A. 6th Cir. Certiorari denied. Reported below: 466 F. 3d 391.

No. 06–1079. LOGAN *v.* EVERETT ET AL. Ct. App. Tenn. Certiorari denied.

No. 06–1080. O'HANDLEY *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 222.

No. 06–1089. HAYES *v.* DENVER AREA MEAT CUTTERS AND EMPLOYERS PENSION PLAN ET AL. Ct. App. Tenn. Certiorari denied. Reported below: 209 S. W. 3d 584.

No. 06–1090. KOFOED *v.* SHIPRACK. C. A. 9th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 646.

No. 06–1091. CHALUPOWSKI ET UX. *v.* MEYERS. C. A. 1st Cir. Certiorari denied. Reported below: 183 Fed. Appx. 12.

No. 06–1096. ROSE *v.* NEWTON-EMBRY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 500.

No. 06–1097. PENG LI *v.* DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, BOARD OF IMMIGRATION APPEALS. C. A. 2d Cir. Certiorari denied. Reported below: 193 Fed. Appx. 31.

No. 06–1099. JONES ET AL. *v.* UNITED PARCEL SERVICE, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 461 F. 3d 982.

No. 06–1102. HUTCHINS *v.* COMPLIENT CORP. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 06–1104. OSTOPOSIDES ET AL. *v.* GLIMP ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–1105. CITY OF ALABASTER, ALABAMA, ET AL. *v.* BEAULIEU. C. A. 11th Cir. Certiorari denied. Reported below: 454 F. 3d 1219.

No. 06–1106. BELL *v.* STARBUCKS U. S. BRANDS CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 289.

No. 06–1108. GATES *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of El Dorado. Certiorari denied.

No. 06–1109. WELLS *v.* LAMZ ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 345.

No. 06–1113. BUCHANAN *v.* UNITED PARCEL SERVICE, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 460 F. 3d 1004.

No. 06–1115. CERVANTES-MANZO *v.* GONZALES, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 374.

No. 06–1117. BROOKINS ET VIR *v.* ZONING COMMISSION OF BOSTON ET AL. App. Ct. Mass. Certiorari denied. Reported below: 66 Mass. App. 1116, 850 N. E. 2d 620.

No. 06–1120. HANFORD *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 154 Fed. Appx. 216.

No. 06–1122. SEMINOLE ENTERTAINMENT, INC., DBA RACHEL'S GENTLEMEN'S CLUB *v.* CITY OF CASSELBERRY, FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 942 So. 2d 898.

No. 06–1125. TIMMONS *v.* DEERE CREDIT, INC., ET AL. (two judgments). C. A. 6th Cir. Certiorari denied.

No. 06–1127. MEDIA SIX, INC., ET AL. *v.* ZIGLAR. Sup. Ct. Va. Certiorari denied.

No. 06–1128. SCOTT *v.* EUREKA SECURITY PRINTING CO., INC., ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–1129. DAVIS ET AL. *v.* VALLEY HOSPITALITY SERVICES, LLC. C. A. 11th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 841.

No. 06–1130. ARMSTRONG ET UX. *v.* COLONIAL BANK, N. A. C. A. 11th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 872.

No. 06–1136. HOWICK *v.* DEPARTMENT OF LABOR, ADMINISTRATIVE REVIEW BOARD. C. A. 6th Cir. Certiorari denied.

No. 06–1147. HUGHES *v.* SANDERS. C. A. 6th Cir. Certiorari denied. Reported below: 469 F. 3d 475.

No. 06–1149. PRONTI *v.* NEW YORK. County Ct., Chemung County, N. Y. Certiorari denied.

No. 06–1151. CRUMP-DONAHUE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 587.

No. 06–1153. OBIANWU *v.* GONZALES, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 06–1162. KNIGHT *v.* WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES. Ct. App. Wash. Certiorari denied. Reported below: 126 Wash. App. 1033.

No. 06–1163. BARNES *v.* TYLER INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 376.

No. 06–1167. WOODY *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 06–1178. HABAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 921.

No. 06–1180. MILSTEIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 207 Fed. Appx. 227.

No. 06–1199. ZELNIK *v.* FASHION INSTITUTE OF TECHNOLOGY, STATE UNIVERSITY OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 3d 217.

No. 06–1200. CHAVIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 461 F. 3d 1201.

No. 06–1201. MASON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 201 Fed. Appx. 22.

No. 06–1205. SCRUGGS ET AL. *v.* MONSANTO CO. C. A. Fed. Cir. Certiorari denied. Reported below: 459 F. 3d 1328.

No. 06–1211. CATLETT *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 169 Md. App. 739.

No. 06–1213. FREEMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 365 Ill. App. 3d 1098, —— N. E. 2d ——.

No. 06–1214. BO WEI HUA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 311.

No. 06–1216. G. M. H. *v.* FLORIDA BOARD OF BAR EXAMINERS. Sup. Ct. Fla. Certiorari denied.

No. 06–1218. WARE *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 170 Md. App. 1, 906 A. 2d 969.

No. 06–1219. AL-ARIAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–1234. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–1237. HERRERA-AGUILAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 818.

No. 06–1244. PUNZO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 468.

No. 06–1246. PATRICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 672.

No. 06–1270. HOOK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 3d 766.

No. 06–7769. TAIRU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–7831. GRIFFITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 455 F. 3d 1339.

No. 06–7886. HAYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 702.

No. 06–7958. FISHER *v.* SCHULTZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–8169. CLARK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 435 F. 3d 1100.

No. 06–8178. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 3d 508.

No. 06–8258. BELL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–8305. CARPENTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 981.

No. 06–8332. MORENO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 839.

No. 06–8356. BATTLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 419 F. 3d 1292.

No. 06–8399. COLEMAN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 3d 537.

No. 06–8504. EDWARDS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 588 Pa. 151, 903 A. 2d 1139.

No. 06–8531. BRAZELTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 513.

No. 06–8575. KLEIN *v.* CARTER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–8704. HOLT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 464 F. 3d 101.

No. 06–8742. VERASTEGUI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 272.

No. 06–8813. BURRELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 467 F. 3d 160.

No. 06–9044. BAZE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 06–9113. PHILLIPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 442.

No. 06–9121. KIMMEL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 338.

No. 06–9218. KATER *v.* DENNEHY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied. Reported below: 459 F. 3d 56.

No. 06–9233. GRIER *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–9243. DOMES *v.* WAKEFIELD, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–9244. DAVIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 203 S. W. 3d 845.

No. 06–9252. FUQUA *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 938 So. 2d 277.

No. 06–9255. LUMPKIN *v.* UPTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–9256. LOPEZ-LORZA *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–9257. MARTIN *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–9260. ANDERSON *v.* HARVEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 336.

No. 06–9261. BARNES *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 06–9262. MORGAN *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 853 N. E. 2d 555.

No. 06–9266. MOHAMMED *v.* RACINE UNIFIED SCHOOL DISTRICT. C. A. 7th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 543.

No. 06–9268. WRIGHT *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–9270. UNDERDAHL *v.* CARLSON, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 796.

No. 06–9288. SALAS *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 716.

No. 06–9291. AWIIS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 06–9292. BAILEY *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 364 Ill. App. 3d 404, 846 N. E. 2d 147.

No. 06–9295. SEAGULL *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 155 Fed. Appx. 80.

No. 06–9300. PANNELL *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9305. LOCH *v.* HURLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9306. CHAVEZ YBARRA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 341.

No. 06–9310. WATKINS *v.* NEW YORK CITY HUMAN RESOURCES ADMINISTRATION ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–9311. SUTTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 363 Ill. App. 3d 1199, —— N. E. 2d ——.

No. 06–9312. SOTO *v.* AYDAR ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–9313. RODRIQUEZ *v.* FAHEY, CHAIRPERSON, VIRGINIA PAROLE BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 272.

No. 06–9314. BOYD *v.* PEARSON. Super. Ct. Pa. Certiorari denied. Reported below: 898 A. 2d 1123.

No. 06–9324. STUMPF *v.* SMITH ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 146 P. 3d 997.

No. 06–9330. JOHNSON *v.* WOODRUFF. C. A. 4th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 298.

No. 06–9337. BLOOM *v.* MCKUNE, WARDEN, ET AL. Ct. App. Kan. Certiorari denied.

No. 06–9338. BELMER *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–9339. ALLEN *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 276.

No. 06–9344. DAVIDSON *v.* MOHEGAN TRIBAL GAMING AUTHORITY ET AL. App. Ct. Conn. Certiorari denied. Reported below: 97 Conn. App. 146, 903 A. 2d 228.

No. 06–9346. DAVIS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 06–9350. MOORE *v.* TEXAS (two judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 06–9354. ROLEY *v.* MOORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9356. STEVENS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–9374. JACKSON *v.* HENNESSY AUTO. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 765.

No. 06–9375. ARMENTA *v.* STANLEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 266.

No. 06–9384. COLES *v.* ROBINSON, WARDEN, ET AL. Sup. Ct. Va. Certiorari denied.

No. 06–9390. COLES *v.* TRUE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 298.

No. 06–9392. CUESTA *v.* POLLARD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–9396. RODRIGUEZ CANTU *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–9399. ODEN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–9401. ROMAN *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 486.

No. 06–9407. MATEO *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 188 Fed. Appx. 601.

No. 06–9409. RIDER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–9410. SIVAK *v.* SARGENT ET AL. Sup. Ct. Idaho. Certiorari denied.

No. 06–9412. MERLA *v.* SAN ANTONIO INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 182 Fed. Appx. 351.

No. 06–9419. KNIZE *v.* KNIZE. Sup. Ct. Conn. Certiorari denied.

No. 06–9424. WILSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 935 So. 2d 945.

No. 06–9425. JACKSON *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 7 N. Y. 3d 849, 857 N. E. 2d 73.

No. 06–9427. SENTY-HAUGEN *v.* GOODNO ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 876.

No. 06–9428. RANTA *v.* BURGE, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 189 Fed. Appx. 54.

No. 06–9429. RUFFIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 939 So. 2d 1060.

No. 06–9431. SABB *v.* SANCHEZ ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–9432. BUI *v.* HOILAND. C. A. 8th Cir. Certiorari denied.

No. 06–9433. BAILEY *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 213 S. W. 3d 907.

No. 06–9438. DEJESUS *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied.

No. 06–9440. DEARING *v.* HAVILAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9443. KNOX *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–9447. BANKUTHY *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 06–9448. BLUMENTHAL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–9449. ARNONE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–9451. BAKER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 144 Cal. App. 4th 1320, 53 Cal. Rptr. 3d 56.

No. 06–9453. ZAKRZEWSKI *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 455 F. 3d 1254.

No. 06–9457. DERAGON *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 655.

No. 06–9467. JAMISON *v.* PARKER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–9468. DAVIS *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9470. PERRY *v.* MISSISSIPPI DEPARTMENT OF CORRECTIONS ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–9471. MUHAMMAD *v.* MARYLAND ATTORNEY GRIEVANCE COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 919.

No. 06–9474. RESTUCCI *v.* MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 06–9481. PEREZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–9483. DILLARD *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 194 Fed. Appx. 365.

No. 06–9484. EDGAR *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–9486. OLAN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–9487. PEREZ *v.* SHERRER, ADMINISTRATOR, NORTHERN STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–9490. NICHOLAS *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–9492. MOORE *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–9503. POPE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 207 S. W. 3d 352.

No. 06–9511. RODRIGUEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 489.

No. 06–9512. STEVENS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 272 Va. 481, 634 S. E. 2d 305.

No. 06–9520. GNAGO *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 284.

No. 06–9528. GAMBE *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–9537. BAGGETT *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 06–9541. LABRUM *v.* HELLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–9555. MCKENNEY *v.* HENSE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 861.

No. 06–9597. NESSELRODE *v.* PROVIDENT FINANCIAL, INC. Sup. Ct. Mont. Certiorari denied. Reported below: 335 Mont. 401, 149 P. 3d 915.

No. 06–9607. WHITE *v.* WALDEN HOUSE DRUG PROGRAM ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 650.

No. 06–9612. WILSON *v.* FARLEY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 239.

No. 06–9616. FEASTER *v.* MARYLAND. Cir. Ct. Prince George's County, Md. Certiorari denied.

No. 06–9626. PEYLA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 472.

No. 06–9631. JAIME-SALDIVAR *v.* HELLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–9632. KUPERMAN *v.* CATTELL, WARDEN, ET AL. Sup. Ct. N. H. Certiorari denied.

No. 06–9657. HANSEN *v.* UNITED STATES MARSHALS SERVICE FOR THE DISTRICT OF NEBRASKA ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–9665. HOUSLEY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 06–9668. EVANS *v.* THOMPSON, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT SHIRLEY. C. A. 1st Cir. Certiorari denied. Reported below: 466 F. 3d 141.

No. 06–9687. GRANBERRY *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–9689. FREEMAN *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 179 Fed. Appx. 54.

No. 06–9691. HARPER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 463 F. 3d 663.

No. 06–9697. MOSELEY *v.* MOTLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9703. MAILE *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–9708. WOODRUM *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 223 Ill. 2d 286, 860 N. E. 2d 259.

No. 06–9710. McManus *v.* Svedin, aka Gibson, Disciplinary Coordinator, et al. C. A. 9th Cir. Certiorari denied.

No. 06–9720. Steverson *v.* McDonough, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 06–9722. Reid *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–9726. Harris *v.* McDonough, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 904.

No. 06–9732. Luscar *v.* McDonough, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 06–9733. Gimenez *v.* Morgan Stanley DW, Inc. C. A. 3d Cir. Certiorari denied. Reported below: 202 Fed. Appx. 583.

No. 06–9751. Lauderdale *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 06–9760. Triplett *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 06–9774. Stouffer *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 147 P. 3d 245.

No. 06–9779. Westman *v.* Clarke, Secretary, Washington Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 568.

No. 06–9785. Barnes *v.* Humphrey, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 06–9787. Conyers *v.* Burt, Warden. C. A. 6th Cir. Certiorari denied.

No. 06–9801. Prasad *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–9809. Davis *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1232, — N. E. 2d —.

No. 06–9814. GREGORY *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied.

No. 06–9816. MENDEZ *v.* HERNANDEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 512.

No. 06–9850. BARRITT *v.* WEST VIRGINIA PAROLE BOARD. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 06–9851. LAPOINTE *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 06–9859. ESTRADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 627.

No. 06–9865. RITTENBERRY *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 468 F. 3d 331.

No. 06–9866. TORRES *v.* WALKER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 364 Ill. App. 3d 666, 848 N. E. 2d 156.

No. 06–9869. MCCABE *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 06–9875. COOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 259.

No. 06–9876. CAVER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 470 F. 3d 220.

No. 06–9881. PARHAM *v.* KLEM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–9887. WINGO *v.* HUSZ. C. A. 7th Cir. Certiorari denied.

No. 06–9893. HUGHES *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 900 So. 2d 168.

No. 06–9898. FINLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 3d 250.

No. 06–9901. RIVERS *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–9905. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 668.

No. 06–9906. GOMEZ *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 687.

No. 06–9910. MORALES HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 283.

No. 06–9911. GOMEZ-GONZALEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–9914. WILCOCK *v.* MAHONEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–9915. THOMAS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 159 Wash. 2d 231, 149 P. 3d 636.

No. 06–9916. LEE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 944 So. 2d 354.

No. 06–9917. LINDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 186.

No. 06–9918. BURNETTE *v.* UNITED STATES PROBATION SERVICES ET AL. C. A. 1st Cir. Certiorari denied.

No. 06–9920. BIROS *v.* HOUK, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 112 Ohio St. 3d 1435, 860 N. E. 2d 761.

No. 06–9923. DIXON *v.* JETER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 365.

No. 06–9924. CARROLL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 179 Fed. Appx. 128.

No. 06–9926. QUIRINO-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 500.

No. 06–9930. PETERSON *v.* BROOKS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 196 Fed. Appx. 135.

No. 06–9931. CURTIS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 212 Fed. Appx. 991.

No. 06–9933. MONIRUZZAMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 819.

No. 06–9934. MENDOZA-SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 379.

No. 06–9940. CUSTARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 440.

No. 06–9942. SILVA-GUERRERO *v.* UNITED STATES (Reported below: 217 Fed. Appx. 687); CASTELLANOS-FLORES *v.* UNITED STATES (217 Fed. Appx. 686); MENDIA-CARBAJAL *v.* UNITED STATES (217 Fed. Appx. 686); and VALDEZ-RAMIREZ *v.* UNITED STATES (210 Fed. Appx. 597). C. A. 9th Cir. Certiorari denied.

No. 06–9944. BENNETTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 219.

No. 06–9946. WADE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–9947. KELLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–9950. RUFF *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 472 F. 3d 1044.

No. 06–9952. SAMPLE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 06–9953. RIES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–9954. RESTREPO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 811.

No. 06–9956. PEREZ-SOLER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–9957. NUNEZ-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 412.

No. 06–9958. PENALOZA-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 376.

No. 06–9959. BOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 285.

No. 06–9960. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 3d 802.

No. 06–9962. AREVALO-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 308.

No. 06–9964. DOMINGUEZ DE ESPARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9966. DILLON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–9974. KING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 623.

No. 06–9976. JENNINGS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 302.

No. 06–9977. DIAZ *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 64 M. J. 176.

No. 06–9980. DOWLING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 733.

No. 06–9982. ALMANZA-TOVAR, AKA TOVAR-ALMANZA *v.* UNITED STATES (Reported below: 209 Fed. Appx. 366); BAEZ-CABRERA *v.* UNITED STATES (208 Fed. Appx. 326); CAMPA-ESPARZA, AKA ESPARZA-CAMPA *v.* UNITED STATES (208 Fed. Appx. 328); COTO-OSORIO *v.* UNITED STATES (208 Fed. Appx. 322); DE LOS RIOS-ROMO *v.* UNITED STATES (208 Fed. Appx. 325); ESCALANTE-GUARDADO *v.* UNITED STATES (208 Fed. Appx. 319); OLVERA-AGUAYO *v.* UNITED STATES (208 Fed. Appx. 315); PEREZ, AKA GALINDO-SUJIA *v.* UNITED STATES (208 Fed. Appx. 329); PEREZ-CORONEL *v.* UNITED STATES (208 Fed. Appx. 328); PINEDA-ORTIZ *v.* UNITED STATES (208 Fed. Appx. 315); RAMIREZ-LOPEZ, AKA GUTIERREZ-LOPEZ *v.* UNITED STATES (209 Fed. Appx. 376); REYNA-VIDAL, AKA REYNA *v.* UNITED STATES (209 Fed. Appx. 370); SANCHEZ-MONTANO, AKA SOSA *v.* UNITED STATES (208 Fed. Appx. 321); TALAVERA-HERNANDEZ *v.* UNITED STATES (208 Fed. Appx. 318); VALDEZ-ALDABA *v.* UNITED STATES (208 Fed. Appx. 319); and VALDES-SANCHES *v.* UNITED STATES (208 Fed. Appx. 321). C. A. 5th Cir. Certiorari denied.

No. 06–9984. VALDIVIA-DE ARCOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–9987. VELORIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 650.

No. 06–9988. CANO-BAEZ, AKA BAEZ-CANO, AKA CANO-BAEZA *v.* UNITED STATES (Reported below: 208 Fed. Appx. 325); CHINCILLA-MONTEJO *v.* UNITED STATES (208 Fed. Appx. 317); and SANCHEZ-GOMEZ *v.* UNITED STATES (208 Fed. Appx. 324). C. A. 5th Cir. Certiorari denied.

No. 06–9990. WATSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 913.

No. 06–9992. PENTZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 411.

No. 06–9993. MITRE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 249.

No. 06–9997. RIVERA-ADORNO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–10003. LEMUSU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 671.

No. 06–10004. JOHNSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–10006. LEVY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 833.

No. 06–10007. JACOBS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 683.

No. 06–10008. LANDIN-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 344.

No. 06–10011. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–10012. ADKINS *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 06–10014. BERNAL-AVEJA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 471.

No. 06–10016. BLACKMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 321.

No. 06–10022. VENGOECHEA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 290.

No. 06–10024. MCLENNAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 570.

No. 06–10026. SCROGGINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–10028. RICARDO *v.* UNITED STATES; and
No. 06–10080. COSSIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 3d 277.

No. 06–10029. SALDANA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 843.

No. 06–10031. MYERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 985.

No. 06–10034. REYES-ANTUNEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 974.

No. 06–10037. VELARDE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 186 Fed. Appx. 817.

No. 06–10038. HUMANA-HERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 368.

No. 06–10041. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 486.

No. 06–10043. HORNE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 865.

No. 06–10046. GOMEZ-AGUAYO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 363.

No. 06–10047. GRACIAN-BERBER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 703.

No. 06–10049. FLORES-SILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 500.

No. 06–10054. GARCIA-ALARCON *v.* UNITED STATES (Reported below: 208 Fed. Appx. 318); and LOPEZ-GOMEZ, AKA GOMEZ-GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–10058. MANLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 709.

No. 06–10061. BENITEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 182.

No. 06–10062. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–10065. JOHNSON *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 06–10067. MENTZOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 830.

No. 06–10068. WILSON *v.* POTTER, POSTMASTER GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 185 Fed. Appx. 448.

No. 06–10071. KRANKEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–10073. LOPEZ-CABALLERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 555.

No. 06–10077. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 295.

No. 06–10078. MCCRAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–10081. CRAWFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 439.

No. 06–10082. LANGAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–10085. RIVERA-RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 477 F. 3d 17.

No. 06–10086. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–10087. BOLDEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 472 F. 3d 750.

No. 06–10089. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 131.

No. 06–10090. VARGAS-LUGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–10091. CORDELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 479.

No. 06–10098. RAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 329.

No. 06–10100. SUTTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 213.

No. 06–10105. REASONER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–10106. MONTOYA-ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–10111. LEWIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 574.

No. 06–10120. PEREZ-CASTRILLO, AKA PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 502.

No. 06–10122. BOBB *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 471 F. 3d 491.

No. 06–10124. RESHARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 628.

No. 06–10126. WREN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 607.

No. 06–10130. FAIR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 186.

No. 06–10132. HITT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 3d 146.

No. 06–10133. HARPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–10139. DELGADO-GAMA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 377.

No. 06–10142. DYSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–10147. PRIETA-QUEZADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 651.

No. 06–10150. JIMENEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–10152. WASHINGTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–10155. YOUNG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 779.

No. 06–10158. JEAN-BAPTISTE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 910.

No. 06–10160. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–10167. BELLAMY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–10172. MCCONNEL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 464 F. 3d 1152.

No. 06–10180. CAMPOS-DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 472 F. 3d 1278.

No. 06–10199. ABDULLAH *v.* MCFADDEN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 06–889. OKLAHOMA *v.* CODDINGTON. Ct. Crim. App. Okla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 142 P. 3d 437.

No. 06–899. FISHING VESSEL CHLOE Z *v.* MATOS ET AL. C. A. 9th Cir. Motion of International Group of P&I Clubs et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 185 Fed. Appx. 569.

No. 06–926. DAEWOO MOTOR AMERICA, INC. *v.* GENERAL MOTORS CORP. ET AL. C. A. 11th Cir. Motion of CMA Business Credit Services for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this motion and this petition. Reported below: 459 F. 3d 1249.

No. 06–1069. KEYTER *v.* MCCAIN, UNITED STATES SENATOR, ET AL. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 207 Fed. Appx. 801.

No. 06–1086. JORDAN *v.* ALTERNATIVE RESOURCES CORP. ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 455 F. 3d 910.

No. 06–1107. PERRYMAN *v.* DEMOCRATIC NATIONAL COMMITTEE ET AL. C. A. 9th Cir. Motion of National Black Republican Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 213 Fed. Appx. 618.

No. 06–9301. MITCHELL *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 06–9382. WATSON *v.* BANK OF AMERICA ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 196 Fed. Appx. 306.

No. 06–9804. SODIPO *v.* CAYMAS SYSTEMS, INC. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 208 Fed. Appx. 524.

Rehearing Denied

No. 05–1240. WALLACE *v.* KATO ET AL., *ante*, p. 384;

No. 06–724. MCCARTHY *v.* SUPREME COURT OF CALIFORNIA ET AL., *ante*, p. 1207;

No. 06–754. IN RE VEY, *ante*, p. 1203;

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No. 06–809. In re Patterson-Beggs, *ante*, p. 1203;

No. 06–5686. Bismark *v.* McDonough, Secretary, Florida Department of Corrections, et al., *ante*, p. 1254;

No. 06–6593. Rigdon *v.* United States, *ante*, p. 1213;

No. 06–6672. Harvey *v.* Louisiana, *ante*, p. 1059;

No. 06–7551. Spencer *v.* Florida, *ante*, p. 1131;

No. 06–7836. Sweatmon *v.* Jones et al., *ante*, p. 1182;

No. 06–7914. Collins *v.* Oklahoma et al., *ante*, p. 1215;

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No. 06–8339. Montgomery-Brooks *v.* Regional Transportation District et al., *ante*, p. 1224;

No. 06–8374. Robinson *v.* United States, *ante*, p. 1185;

No. 06–8506. Tensley *v.* United States, *ante*, p. 1229;

No. 06–8536. Crooks et ux. *v.* Commissioner of Internal Revenue, *ante*, p. 1230;

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No. 06–9038. Bratcher *v.* United States, *ante*, p. 1258;

No. 06–9158. Perez *v.* United States, *ante*, p. 1260; and

No. 06–9228. In re Berry, *ante*, p. 1264. Petitions for rehearing denied.

Reporter's Note

The next page is purposely numbered 1501. The numbers between 1363 and 1501 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

STROUP, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF ARCHIVES AND HISTORY, ET AL. *v.* WILLCOX ET AL.

ON APPLICATION FOR STAY

No. 06A592. Decided December 18, 2006

Applicants' request to stay a Fourth Circuit judgment pending the filing and disposition of a petition for certiorari is denied. Their request fails to meet this Court's standard for such relief. Moreover, it is undermined by the fact that the central argument pressed here was mentioned by applicants only in passing in the courts below.

CHIEF JUSTICE ROBERTS, Circuit Justice.

The State of South Carolina and Rodger Stroup, the director of the State's Department of Archives and History, apply for a stay of the judgment issued by the Court of Appeals for the Fourth Circuit pending the filing and disposition of a petition for writ of certiorari in this Court. Their request fails to meet our standard for such relief. See *Barnes* v. *E-Systems, Inc. Group Hospital Medical & Surgical Ins. Plan*, 501 U. S. 1301, 1302 (1991) (SCALIA, J., in chambers).

Moreover, a request for extraordinary equitable relief is certainly undermined when the central argument pressed was only mentioned by applicants in passing in the court below. Applicants' request is based almost exclusively on the Court of Appeals' failure to certify to the Supreme Court of South Carolina contested questions of state property law. In their initial submission to the Court of Appeals, however, applicants requested that the court rule on the merits of the matter. They merely noted that certification "is an option

for [the] Court if it wants guidance from the South Carolina Supreme Court." Brief for Appellants in No. 06–1179 (CA4), p. 37, n. 9.

Accordingly, the request for a stay is denied.

It is so ordered.

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